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No. 81-79

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

IN RE STATE OF MISSOURI, ET AL.,
Petitioners,
v.
UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
AND THE
HONORABLE CHARLES W. BAKER, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI FROM FINAL JUDGMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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STATEMENT OF THE CASE

Respondent/Intervenor, Robert P. Lindsey, Chapter 11 Reorganization Trustee for Cox Cotton Company d/b/a James Grain & Cotton Company, an Arkansas Corporation, and Don James, Robert James, and G. E. James, a general partnership, d/b/a Frisbee Cotton Company and James

Grain & Elevator a/k/a James Gin & Elevator, ("Respondent/Trustee") submits the following as his Statement of the Case in order that this Court may have a better understanding of the factual and legal background of the issues involved.

On August 11, 1980, voluntary Chapter 7 bankruptcy petitions were filed in the United States Bankruptcy Court for the Eastern District of Arkansas ("Bankruptcy Court") by Cox Cotton Company, an Arkansas corporation, d/b/a James Grain & Cotton Company; and, by Don James, Robert James, and G. E. James, a general partnership, d/b/a Frisbee Cotton Company; James Grain & Elevator. The latter two general partnerships operate exclusively and have business operations at Ristine, Caruthersville, Jonesway, Holcomb, and Naylor, Missouri. Prior to the filing of the Chapter 7 petitions on behalf of the two Missouri general partnerships, each was licensed by the Department of Agriculture of the State of Missouri to operate grain warehouses and elevators within that state. Also, on August 11, 1980, Mr. and Mrs. Donald R. James, individually, filed a separate Chapter 7 bankruptcy proceeding as did related and affiliated corporations operating in both Arkansas and Missouri owned and controlled by the James brothers.

Evidence introduced at different court hearings during these proceedings clearly indicates that petitioners herein at least as early as July 21, 1980, knew or should have known of substantial shortages of grain in James elevators at various locations in the State of Missouri operated by the above Missouri general partnerships. Between the dates of July 21, and August 8, 1981, and perhaps earlier, in order to cover at least some of these shortages, substantial movements of grain were made from elevator facilities under the control of the James brothers in Arkansas to

elevator facilities also under their control in the State of Missouri.

On or about August 8, 1981, prior to the commencement of any state court receivership proceedings in the State of Missouri, representatives of petitioners persuaded Donald R., Robert W., and George E. James to execute one or more documents purporting to surrender possession and custody of the Missouri elevators to petitioners. Not until after voluntary Chapter 7 proceedings were filed for the above Missouri debtor partnership entities for which Respondent/Trustee is acting as Trustee did petitioners institute any type of legal proceedings under Missouri's Grain Warehouse Law in the various circuit courts of that state. The initial seizure of the warehouses by petitioners was done without compliance with Chapter 411 of the Revised Statutes of Missouri and in particular in non-compliance with §411.519 of the Missouri Grain Warehouse Law.

On or about August 12, 1980 (the day after the filing of the voluntary Chapter 7 petitions by the Missouri general partnership entities under the control of Respondent/Trustee), approximately five (5) *ex parte* Orders were entered by various circuit courts of the State of Missouri in separate counties wherein the Missouri partnership debtor entities had grain elevator operations. These Orders in identical form appointed the Director of the Department of Agriculture of the State of Missouri (a predecessor of one of petitioners) as state court receiver for each partnership debtor entity and authorized the liquidation of the businesses including the grain inventory allegedly pursuant to the Missouri Grain Warehouse Law and in particular under §411.519 thereof. (A copy of one of the Orders is included in Respondent/Trustee's Appendix.)

On August 15, 1980, Respondent/Trustee, pursuant to

an application made with the Bankruptcy Court was authorized to operate the businesses of the Arkansas and Missouri debtor entities pending further orders of the Court, all as authorized under 11 U.S.C. §721. Thereafter, Respondent/Trustee and the employees of the debtor entities resumed business operations and began to untangle the complex affairs of the debtor entities.

On August 29, 1981, Respondent/Trustee was, after notice and hearing, permitted by the Bankruptcy Court by written Order to assume certain executory contracts entered into by and between the various debtor entities and certain farmers pre-petition so that deliveries of milo and/or grain sorghum in substantial amounts might be compelled by Respondent/Trustee and profits generated for the estates of the debtor entities. The August 29, 1980, Order was entered upon notice to petitioners, was not appealed from, and is now final. (A copy of this Order is included in Respondent/Trustee's Appendix.)

During the months of August and September, 1980, representatives of petitioners made repeated statements to the news media to the effect that the Missouri state court receivership proceedings were instituted in an effort to keep Missouri farmers' grain from being "frozen" in litigation, to "seek to preserve the integrity of Missouri's Grain Warehouse Laws", to prevent Arkansas farmers from sharing in grain stored in Missouri in debtors' warehouses, and to prevent the Bankruptcy Court from exercising exclusive jurisdiction and control over the assets of the debtor entities, including the Missouri grain.

On or about September 3, 1980, one of petitioners, the Attorney General of the State of Missouri, acting through an Assistant Attorney General, filed in the United States Bankruptcy Court for the Eastern District of Arkansas an "Application for Determination of Ownership of Customer-

Owned Assets, for Liquidation of Customer-Owned Assets, and Distribution of the Proceeds." (A copy of the Application is included in Respondent/Trustee's Appendix.) It is very interesting to note that the Application requested that the Bankruptcy Court not only determine ownership of the grain, but liquidate the same and distribute the proceeds as soon as possible in order to take advantage of optimum market conditions; and, further, to prevent deterioration or a loss of the grain and its value. This pleading requested that Respondent/Trustee take immediate affirmative steps to liquidate the grain and distribute the proceeds. In fact, in paragraph ten (10) of the Application, Mr. John G. Runyan, in his capacity as Director of the Missouri Department of Agriculture, (one of the petitioner's predecessor) suggested to the Bankruptcy Court that he had in his employ experts in the field of grain management and regulation and that he was well suited to act as the agent of the Respondent/Trustee or otherwise be of assistance in handling the sale and distribution of the proceeds.

After a confrontation with some of the petitioners and their representatives on or about September 17, 1980, at Poplar Bluff, Missouri, Respondent/Trustee, acting through his duly appointed attorneys, filed on September 23, 1980, under the authority of 11 U.S.C. §363(f) his Complaint to Sell All Grain in Arkansas and Missouri Free and Clear of Liens with all valid liens and/or ownership claims to attach to the net sale proceeds. Prior to and after the filing of the above Complaint by Respondent/Trustee, there occurred an unlawful assembly of farmers who had for their purpose the blockade of the Ristine, Missouri, elevator facility being operated by Respondent/Trustee. On September 15, 1980, pursuant to a previous written Application, the Bankruptcy Court entered an Order granting Respondent/Trustee the assistance of United States Mar-

shals for the Eastern District of Missouri in dissolving the unlawful blockade of farmers at Ristine, Missouri, so that milo deliveries might be made at said facility by farmers who desired to perform their milo delivery contracts with the debtor entities operated by Respondent/Trustee. (A copy of the Order dated September 15, 1980, is included in Respondent/Trustee's Appendix.)

From late August, 1980, until the general election in the State of Missouri on November 4, 1980, the matter of the jurisdictional fight over the Missouri grain became a hotly contested issue in all political races.

In the early fall of 1980, it became apparent to Respondent/Trustee and his counsel and employees that the prime motive behind actions of petitioners in interfering with the jurisdiction of the Bankruptcy Court was to protect the farmers' "pecuniary interest" in the grain alleged to be owned by them and to save (at the expense of the taxpayers of the State of Missouri) said farmers from having to employ private legal counsel. Although petitioners have alleged in proceedings below and in this Court that they have no direct "pecuniary interest" of their own in the Missouri grain, they apparently do attempt in Missouri state court proceedings to recover their legal costs and expenses from the sale thereof should it be established that subject matter jurisdiction over the Missouri grain is vested in the Missouri circuit courts and not in the Bankruptcy Court. So, at least to that extent, petitioners do have a contingent "pecuniary interest" in the grain.

In late September, 1980, the Bankruptcy Court scheduled a hearing for Monday, October 27, 1980, at the U. S. Post Office and Courthouse Building, Little Rock, Arkansas, on the issue as to whether the Arkansas and Missouri grain in the custody and possession of Respondent/Trustee should be sold free and clear of liens. All defendants, num-

bering in excess of three hundred (300), received actual notice of said hearing. Also, on October 20, 1980, was scheduled a hearing on "Trustee's Motion to Dismiss Application for Determination of Ownership of Customer-Owned Assets, et al." filed September 15, 1980, and which also is made a part of Respondent/Trustee's Appendix. Early on the morning of the hearing, the then Director of the Missouri Department of Agriculture and state court receiver, John G. Runyan, caused the pleading filed by him on September 3, 1980, to be dismissed so that his attorneys could institute that same day proceedings in the various circuit courts of the State of Missouri for an immediate seizure of all of the assets of the Missouri partnership entities under the jurisdiction of Respondent/Trustee and the Bankruptcy Court and for an injunction against Respondent/Trustee and his attorneys and agents from in any way interfering with said proceedings in the circuit courts of the State of Missouri. A copy of the Petition and Show Cause Order filed and entered on October 20, 1980, *ex parte,* is made a part of Respondent/Trustee's Appendix.

At approximately 2:00 p.m., Monday, October 20, 1980, said pleadings were delivered to the offices of Ben F. Arnold, one of the duly appointed attorneys for Robert P. Lindsey, Trustee, by a representative of one of petitioner's predecessor, John G. Runyan, in his capacity as Receiver and Director of the Missouri Department of Agriculture. Upon obtaining a copy of said pleadings, and having read the same, Trustee and his counsel informed the Honorable Charles W. Baker, Bankruptcy Judge, of the existence of the proceedings and indicated to Judge Baker that a Petition for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Contempt Citation against appellants would shortly be thereafter filed in the Bankruptcy Court and that said matter should be brought

on for hearing on a preliminary basis as soon as practicable with whatever notice as might be appropriate. Respondent/ Trustee is unaware of the nature and subetance of any phone conversations between the Honorable Charles W. Baker, Bankruptcy Judge, and Mr. James F. Gunn, one of the attorneys of record for appellants, in proceedings before the Bankruptcy Court. However, Respondent/ Trustee, upon information and belief, has reason to believe that matters set for hearing and determination before Respondent, Honorable Charles W. Baker, Bankruptcy Judge, on Wednesday morning, October 22, 1980, concerned whether a show cause order should be issued with respect to contempt matters and whether the defendants to said proceeding would be required to answer the Respondent/ Trustee's charges within a later determined period of time; and, as to whether a temporary restraining order should be issued pending further proceedings before Judge Baker for a preliminary injunction. That it was never the intent and purpose of any communications from Respondent, Honorable Charles W. Baker, Bankruptcy Judge, to Mr. James F. Gunn to put petitioners to trial on the merits on such short notice. However, under the circumstances, some action had to be taken by Respondent/Trustee since the hearing as to whether he should be authorized to sell all grain in Arkansas and Missouri free and clear of liens was scheduled for hearing and trial before Judge Baker at 10:00 O'Clock a.m. Monday, October 27, at Little Rock. The parties and their counsel were entitled to know whether the hearing would go forward or be continued. Out of state witnesses had been subpoenaed for the hearing.

Instead of seeking writs of prohibition in the Eighth Circuit Court of Appeals on October 21, 1980, and December 22, 1980, petitioners had other legal remedies available to them. They could have moved the Bankruptcy Court for a continuance even on preliminary matters relative to the

Trustee's Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Contempt Citation. Petitioners could have sought intervention and moved for a continuance or dismissal for lack of the Bankruptcy Court's jurisdiction on the initial hearing on Respondent/Trustee's Complaint to Sell all Grain Free and Clear of Liens scheduled for 10:00 a.m. October 27, 1980. Petitioners chose not to seek a motion for continuance or dismissal in either proceeding although being on actual notice of the hearings. Petitioners could have sought from the Bankruptcy Court its abstention from each proceeding pursuant to the terms of 28 U.S.C. §1471(d). If the Bankruptcy Court had entered an order abstaining from either of said proceedings, the order would not have been reviewable by appeal or otherwise. Also, under 11 U.S.C. §305, petitioners could have asked the Bankruptcy Court to abstain from all proceedings relative to the Missouri general partnership debtor entities and any other debtor entity having operations within the State of Missouri. Also, petitioners could have asked that certain of the proceedings dealing with Missouri grain be transferred under grounds of *forum non conveniens* to the United States Bankruptcy Court for the Eastern District of Missouri for further proceedings. Finally, petitioners at all times herein mentioned had the right of appeal from any adverse order of the Bankruptcy Court to the United States District Court for the Eastern District of Arkansas and to the Eighth Circuit Court of Appeals. Therefore, proceedings for writs of prohibition were not then and are not now appropriate as other adequate legal remedies have always been available to these petitioners.

On October 21, 1980, the United States Court of Appeals for the Eighth Circuit entered an Order denying petitioners' Petition for Writ of Prohibition without prejudice but staying all proceedings in the Bankruptcy Court

in all cases in which Respondent/Trustee was acting pending the filing by petitioners of a Petition for Writ of Prohibition with the United States District Court for the Eastern District of Arkansas on or before October 30, 1980. Late in the afternoon of October 30, 1980, a Petition for Writ of Prohibition with exhibits and a supporting brief was in fact filed in the United States District Court for the Eastern District of Arkansas. Thereafter, on December 2, 1980, after briefs were filed by various parties and intervenors, and after oral argument was heard, the United States District Court for the Eastern District of Arkansas entered its Memorandum Opinion and Order upholding the exclusive subject matter jurisdiction of the Bankruptcy Court over the Missouri grain. A copy of the December 2, 1980 Memorandum Opinion and Order of the Honorable George Howard, Jr., United States District Judge for the Eastern District of Arkansas, is included in petitioners' Appendix. At the hearing before the United States District Court on November 17, 1980, Respondent/Trustee was permitted to intervene as a party-respondent in proceedings on petitioners' Petition for Writ of Prohibition. Also, in excess of forty (40) individual Arkansas farmers represented by the Honorable Bill W. Bristow, Attorney at Law, Jonesboro, Arkansas, were allowed to intervene as parties-respondents in said proceedings. Orders authorizing the interventions are included in Respondent/Trustee's Appendix.

Upon it having been determined that subject matter jurisdiction over the Missouri grain was vested in the Bankruptcy Court, the Respondent Bankruptcy Judge of that Court once again set for hearing and trial on December 23, 1980, the question as to whether the Arkansas and Missouri grain should be sold by Respondent/Trustee free and clear of liens with all valid liens and/or ownership claims, if any, to attach to the net sale proceeds. Notice

was mailed to all defendants, creditors, and all attorneys of record. However, on December 22, 1980, petitioners filed a second Petition for Writ of Prohibition in the United States Court of Appeals for the Eighth Circuit seeking a stay order of all proceedings in the Bankruptcy Court pending further proceedings in the Eighth Circuit Court of Appeals. A second *ex parte* general stay order was entered by the Eighth Circuit Court of Appeals enjoining all pending proceedings (whether or not related to issues over the subject matter jurisdiction of the Missouri grain) pending an expedited briefing schedule, oral argument, and a decision on the merits by the Eighth Circuit Court of Appeals. Other critical matters in the Chapter 11 reorganization cases for Respondent/Trustee's debtor entities had also been set for hearing on December 23, 1980, but were also stayed, although having no relation to the jurisdictional dispute over the Missouri grain.

Thereafter ensued repeated attempts by petitioners, Respondent/Trustee, and their counsel to negotiate some acceptable settlement with respect to not only the jurisdictional issues involving the Missouri grain, but a settlement on the merits with respect to all adverse claims to that grain. Settlement negotiations continued until mid-February, 1981, when it became apparent that further negotiations would not be fruitful. Thereafter, the jurisdictional issues were thoroughly briefed by counsel for petitioners and the various respondents and the matter was orally argued on March 11, 1981.

On April 8, 1981, the United States Court of Appeals for the Eighth Circuit entered its Memorandum Opinion and Order upholding the exclusive subject matter jurisdiction of the Bankruptcy Court over the Missouri grain. The Memorandum Opinion and Order dated December 2, 1980, of the Honorable George Howard, Jr., United States Dis-

trict Judge for the Eastern District of Arkansas, was affirmed, and the second Writ of Prohibition filed by petitioners in the Eighth Circuit Court of Appeals was dismissed. Petitioners did not seek a stay order from the Eighth Circuit Court of Appeals with respect to the operative effect of its Memorandum Opinion and Order. Upon information and belief, no stay order was sought from this Court seeking to hold in abeyance the operative effect of the April 8, 1981, Memorandum Opinion and Order of the Eighth Circuit Court of Appeals.

Between the dates of September 23, 1980 (the date Respondent/Trustee commenced his adversary proceeding to sell all grain in debtors' elevators in Missouri and Arkansas free and clear of liens), and April 8, 1981 (the date of the Memorandum Opinion and Order of the United States Court of Appeals for the Eighth Circuit upholding the subject matter jurisdiction of the Bankruptcy Court over the Missouri grain), the fair market price of No. 2 yellow soybeans declined in value from approximately $9.50 per bushel to approximately $7.00 per bushel. Respondent/Trustee estimated that approximately 164,992 bushels of soybeans were located in Respondent/Trustee's elevators in the State of Missouri at the various locations. Similarly, the fair market value of milo and/or grain sorghum was likewise declining during this period which caused further diminution in the value of the assets of the debtor entities. Respondent/Trustee estimated that approximately 1,071,604 bushels of milo were in inventory at the different locations. Respondent/Trustee also had information during this period of time that the quality and condition of the grain in his Missouri elevators were deteriorating substantially due to the presence of insects, "hot spots", and other detrimental agents. Respondent/Trustee also estimated that funds from the sale of the Missouri grain could be invested at interest rates anywhere from 13% to 15.5% per

annum upon the grain being sold, unloaded, delivered, and settlements made with grain purchasers. Also, it was obvious to Respondent/Trustee that administrative costs in caring for, preserving, and protecting the grain in the nature of Trustee's fees, attorneys' fees, accounting fees, professional expenses, office overhead, trucks and fuel, travel, chemicals, preservatives, insurance, manual labor, and rent charges could be diminished and essentially eliminated upon the grain being sold free and clear of liens under 11 U.S.C. §363. Finally, it was apparent that storage charges were accruing daily which would have to be assessed against the owners and/or lien claimants to the grain thereby reducing their ultimate distribution.

Shortly after the Memorandum Opinion and Order dated April 8, 1981, of the United States Court of Appeals for the Eighth Circuit was entered, Respondent/Trustee requested of the Bankruptcy Court that once again the issue as to whether the Missouri grain should be sold free and clear of liens by Respondent/Trustee should be scheduled for hearing and trial. On or about February 4, 1981, the Bankruptcy Court had previously determined pursuant to notice and hearing that the Arkansas grain should in fact be sold free and clear of liens under appropriate safeguards and protective orders. A copy of the February 4, 1981, Order Authorizing Trustee to Sell the Arkansas Grain Free and Clear of Liens is included in Respondent/Trustee's Appendix.

On April 21, and May 8, 1981, pre-trial conferences were held by the Respondent Bankruptcy Judge with various attorneys concerning the legal and factual issues, complexities, and problems of proof to be presented at the hearing and trial on the issue as to whether the Missouri grain should be sold free and clear of liens. Pursuant to a carefully drawn pre-trial Order (a copy of which is included

in Respondent/Trustee's Appendix), the hearing and trial began at the U. S. Post Office and Courthouse Building, Little Rock, Arkansas, on May 18, and May 19, 1981. After one and one-half days of testimony, on May 27, 1981, Bankruptcy Court entered its Memorandum Opinion and separate Orders authorizing Trustee to sell all grain situated in his debtors' elevators in the State of Missouri free and clear of liens. A copy of the Memorandum Opinion and one of the separate Orders of the Bankruptcy Court are included in Respondent/Trustee's Appendix. Said Orders were not appealed from by any party and are now final.

Upon the time for appeal having passed from the May 27, 1981, Orders of the Bankruptcy Court Respondent/Trustee widely sought bids from various grain purchasers for the sale of all the Missouri grain. On June 24, and July 2, 1981, written contracts were entered into by and between Respondent/Trustee and Bearhouse, Inc. for the purchase and sale of the Missouri grain. Copies of these contracts are included in Respondent/Trustee's Appendix.

Substantial performance has already occurred under the terms and provisions of said contracts. Considerable quantities of grain (soybeans, milo and/or grain sorghum, corn, and wheat) have already been unloaded and removed from the various elevators under the legal control of Respondent/Trustee. It was estimated under the contracts that approximately ninety (90) days would be sufficient for full performance on and after July 13, 1981. Due to certain civil commotions, blockades, and threats against one or more of the elevators under the control of Respondent/Trustee, said period may have to be extended slightly. Substantial funds have already been received and invested by Respondent/Trustee from the sale of the Missouri grain. Under the May 27, 1981, Orders of the Bankruptcy Court, Respondent/Trustee was ordered to invest said funds in

one or more interest bearing certificates of deposit pending a determination of the exact ownership and/or lien claims to the grain.

It is at once apparent that the question of jurisdiction over the Missouri grain as a practical matter is now moot since under the April 8, 1981, Order of the Eighth Circuit Court of Appeals, exclusive subject matter jurisdiction has been established in the Bankruptcy Court. Missouri grain sale operations have been commenced; and, a substantial amount of the grain already has been unloaded and sold. Respondent/Trustee submits that petitioners at this late stage of this jurisdictional dispute have no good and practical reason to seek any relief from this Court as operations and liquidation of the assets of the debtor entities by Respondent/Trustee are well in process of being fully consummated.

RESPONDENTS' REASONS FOR NOT GRANTING THE WRIT

Pursuant to Rule 17 of the Rules of this Court, Respondent/Trustee and Respondents/Intervenors Gary Hart, et al. ("Arkansas Farmers") submit the following are valid and appropriate reasons why the Writ should not be granted:

1. *The jurisdictional issues discussed in Petitioners' Petition for Writ of Certiorari are moot.*

Without question, petitioners have failed to request stay orders from either this Court or the Court of Appeals for the Eighth Circuit with respect to the Memorandum Opinion and Order entered on April 8, 1981, by the Eighth Circuit Court of Appeals. Petitioners utilized almost the entire ninety (90) day period as prescribed by Rule 20 of this Court and 28 U.S.C. §2101(c) within which to file their Petition for Writ of Prohibition, Brief, and Appendix.

During this period of time, Respondent/Trustee and the other respondents herein (appellees below in the Eighth Circuit Court of Appeals) had every reason to believe that no further legal proceedings would be instituted in this or in any other court questioning further the exclusive subject matter jurisdiction of the Bankruptcy Court over the Missouri grain. Petitioners did not seek to intervene in or appear at the hearings on May 18 and 19, 1981, in the Bankruptcy Court concerning the issue as to whether the Missouri grain should be sold free and clear of liens and, if so, by what method and safeguards. Neither petitioners nor any party took an appeal from the May 27, 1981, Memorandum Opinion and Orders of the Bankruptcy Court authorizing Respondent/Trustee to sell all of the Missouri grain free and clear of liens. No attempt was made to post any type of stay bond. Prior to filing their Petition for Writ of Certiorari in this Court, petitioners did not indicate in any way or manner to Respondent/Trustee that further proceedings would be instituted regarding the exclusive jurisdiction of the Bankruptcy Court over the Missouri grain. As mentioned above, Respondent/Trustee has now sold under contract all of the Missouri grain, a substantial amount of which has already been unloaded, transported, and cash funds received and invested by Respondent/Trustee. Unloading and shipment of grain are currently proceeding smoothly except at one location in Missouri. In addition, Respondent/Trustee is attempting to lease and/or sell the various elevator facilities owned by the debtor entities in the State of Missouri. There are no ongoing new business operations (grain or otherwise) of the debtor entities at these locations requiring in any manner a license or licenses to be issued by the State of Missouri to Respondent/Trustee. There are no continuing operations such as buying and selling grain, deferred pricing contracts, storage of new crop grain, and the like requiring

intervention in any particular by petitioners. There are simply no ongoing business operations which need to be regulated, supervised, licensed or even monitored by petitioners. The public health, safety, and welfare of the citizens of the State of Missouri are not and never have been in jeopardy as a result of Respondent/Trustee performing the duties imposed upon him by previous Orders of the Bankruptcy Court under the United States Bankruptcy Code. It is anticipated by Respondent/Trustee that all real property and other personal property of these Missouri general partnerships will be liquidated and sold under the terms of a liquidation type Plan of Reorganization to be filed in the immediate future. Even should this Court grant petitioners' Petition for Writ of Certiorari and on the merits determine that the United States Court of Appeals for the Eighth Circuit has erred in its decision on subject matter jurisdiction over the Missouri grain, nevertheless, due to the passage of time and intervening events, nothing substantively will have been accomplished for the benefit of any creditor except further unnecessary expenditures of professional time and money which will not benefit the unsecured creditors of the debtors' estates. Respondent/Trustee is already doing what petitioners seek to do. Prior litigation over the jurisdictional issues related to the Missouri grain have already cost the creditors of the debtor entities several thousands of dollars which never will be recouped. This Court should not sanction a further drain of the cash resources of these debtor entities to the economic disadvantage of these unfortunate creditors.

2. *The Memorandum Opinion and Order of the Eighth Circuit Court of Appeals is not in conflict with the decision of another federal court of appeals on the same matter.*

To the best of the knowledge, information and belief of Respondent/Trustee and his counsel, the decision of

the Eighth Circuit Court of Appeals as to the jurisdictional effect of 11 U.S.C. §362 and in particular 11 U.S.C. §362(b)(4) is the first such decision of a federal court of appeals on said matter. Although other bankruptcy courts have determined the same issue under different facts, appeals, if any, from their decisions have not yet reached another federal court of appeals. Therefore, there is no conflict among the circuit courts of appeals on this issue and, thus, no valid, special, and important reason why the interpretation of this provision of the Bankruptcy Code should be considered by this Court at this time.

3. *The decision of the Eighth Circuit Court of Appeals is not in conflict with any applicable decision of this Court.*

As early as 1903, this Court had an opportunity to comment on the supremacy of the bankruptcy laws over state receivership proceedings involving the liquidation of debtors' estates pursuant to Article 6, Clause 2 of the Constitution of the United States. *In Re: Watts,* 190 U.S. 1, 23 S.Ct. 718, 47 L.Ed. 933, this Court at page 724 said:

> "And the operation of the bankruptcy laws of the United States cannot be defeated by insolvent commercial corporations applying to be wound up under state statutes. The bankruptcy law is paramount, and the jurisdiction of the Federal courts in bankruptcy, when properly invoked, in the administration of the affairs of insolvent persons and corporations, is essentially exclusive. Necessarily, when like proceedings in the state courts are determined by the commencement of proceedings in bankruptcy, care has to be taken to avoid collision in respect of property in possession of the state courts. Such cases are not cases of adverse possession, or of possession and enforcement of pre-existing liens, or in aid of the bankruptcy proceeding. The general rule as between courts of concurrent jurisdiction is that property already in possession of the receiver of one court cannot rightfully be taken from

him without the court's consent, by the receiver of another court appointed in a subsequent suit; but, that rule can have only a qualified application where winding up proceedings are superseded by those in bankruptcy as to which the jurisdiction is not concurrent."

In the above case, this Court clearly held that the Bankruptcy Court had exclusive jurisdiction under the supremacy clause of the United States Constitution over state receivership proceedings involving the liquidation of the debtors' estates and property. This Court's decision in the *Watts* case, supra, was reaffirmed in the case of *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U.S. 734, 51 S.Ct. 270, 75 L.Ed. 645 (1931). In that landmark case, this Court held that the Bankruptcy Court had exclusive jurisdiction to deal with the property of the bankrupt's estate including the ordering of a sale of real property lying outside the district. This Court also held that when jurisdiction once attaches, the Court's possession of the jurisdiction cannot be affected by actions brought in other courts, citing *White* v. *Schloerb*, 178 U.S. 542, 20 S.Ct. 1007, 44 L.Ed. 1183; *Murphey* v. *John Hofman Co.*, 211 U.S. 562, 29 S.Ct. 154, 53 L.Ed. 327; and *Dayton* v. *Stanard*, 241 U.S. 588, 36 S.Ct. 695, 60 L.Ed. 1190.

This Court recently had another occasion to reaffirm the effect of the supremacy clause of the United States Constitution with respect to the jurisdiction of bankruptcy courts over state proceedings. In the case of *Perez, et ux.* v. *Campbell, Superintendent*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971), this Court held that a provision of the Arizona Motor Vehicle Safety Responsibility Act was in direct conflict with §17 of the Bankruptcy Act and, therefore, was unconstitutional as being in violation of the supremacy clause. In that case, the State of Arizona sought to impose a different discharge provision than that legis-

lated by the United States Congress under §17 of the now repealed Bankruptcy Act.

Therefore, it has been well settled by this Court beyond any doubt that a bankruptcy action preempts state court insolvency proceedings. The above cases stand for the proposition that the bankruptcy law is paramount, and the jurisdiction of the federal courts in bankruptcy, when properly invoked in the administration of the affairs of insolvent persons and corporations, is essentially exclusive.

It is also interesting to note that petitioners fail to point out in their Petition for Writ of Certiorari that even if the State of Missouri's own liquidation proceedings in Missouri state courts come within the exception to 11 U.S.C. §362(a) as set forth in 11 U.S.C. §362(b)(4), nevertheless the Bankruptcy Court can take appropriate steps to protect its jurisdiction over assets of the estate, regardless of whether a proceeding falls within the section 362(b)(4), by issuing any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title as authorized by 11 U.S.C. §105(a). Therefore, even a favorable determination by this Court on the merits as to the applicability of §362(b)(4) after the petition for writ of certiorari has been granted will avail petitioners of nothing since at these late stages in these Chapter 11 proceedings for these debtor entities, the United States Bankruptcy Court for the Eastern District of Arkansas will undoubtedly retain jurisdiction by entering an appropriate order under 11 U.S.C. §105(a). See *In Re: Shippers Interstate Service, Inc.*, 618 F.2d 13; *In Re: Bel Air Chateau Hospital, Inc.*, 611 F.2d 1251; *In Re: W. F. Hurley, Inc.*, 553 F.2d 1096; *In Re: Saugus General Hospital, Inc.*, 19 C.B.C. 651 (D.Mass. 1978); *Stout* v. *Green*, 131 F.2d 995 (1942); *Duggan* v. *Sansberry*, 327 U.S. 499 (1946); *Schatzman, Trustee* v. *Department of Health, et al.*, 2 C.B.C.2d 639 (S.D.

Florida, 1980); and *The Seeburg Corp.* v. *NLRB*, 2 C.B.C. 2d 880 (N.D. Ill., 1980).

Respondent/Trustee further submits that the legislative history fully discussed in the Memorandum Opinion and Order of the United States Court of Appeals for the Eighth Circuit made part of petitioners' Appendix and other cases cited in that Memorandum Opinion and Order leave absolutely no doubt of the correctness of that decision. The Bankruptcy Court clearly has jurisdiction over all the property of the debtors under 28 U.S.C. §1471, 28 U.S.C. §1481, and 11 U.S.C. §541. There is simply no compelling, appropriate, or desirable reason why this Court should issue its writ of certiorari to review the decision of a lower federal court so plainly correct as to leave really no substantial doubt as to its validity. In this jurisdictional area which is already well settled, the 1978 Bankruptcy Reform Act made no significant changes in prior bankruptcy law. If anything, the jurisdiction of bankruptcy courts is broadened and clarified. Therefore, there is no need for this Court to review the decision of the United States Court of Appeals for the Eighth Circuit.

4. *There are no special and important reasons for granting the Petition for Writ of Certiorari.*

The decision of the Eighth Circuit Court of Appeals in no way limits, restricts, or prohibits the enforcement by petitioners of legitimate public health, consumer protection, and safety laws and regulations of the State of Missouri. These areas of enforcement are in no way affected by the decision of the Eighth Circuit Court of Appeals and are not within the automatic stay provisions of 11 U.S.C. §362. Factually, petitioners seek to infringe upon the traditional functions of bankruptcy courts in liquidating debtors' estates. As above stated, these functions traditionally have been vested in bankruptcy courts to the exclusion of state

regulatory authorities. Petitioners will still be allowed to exercise reasonably their police power consistent with the holdings of this Court in *Penn Central Transportation Co.* v. *City of New York,* 98 S.Ct. 2646 (1978); *Goldblatt* v. *Town of Hempstead,* 369 U.S. 590 (1962); *Huron Portland Cement Co.* v. *Detroit,* 362 U.S. 440 (1960); *Miller* v. *Schonee,* 276 U.S. 272 (1928); *Hadacheck* v. *Sebastian,* 239 U.S. 394 (1915); and *Lawton* v. *Steele,* 152 U.S. 133 (1894). But when state regulation in the name of its police power takes the form of seizure of property of bankrupts' estates and their attempted liquidation, the police or regulatory power is no longer being exercised consistent with 11 U.S.C. §362(b)(4). A governmental unit clearly may not act to protect a pecuniary interest in property of the Debtor or property of the estate. (95 Cong. Rec. H11092 and S17409) The factual distinctions in this case from others above cited do not justify this Court in granting petitioners Petition for Writ of Certiorari.

CONCLUSION

Petitioners have asserted no special or important reason why this Court at this time should review by issuance of a writ of certiorari a clearly correct decision of a lower federal court, not in conflict with any decision of another court of appeals or of this Court. Jurisdiction over the Missouri grain and Respondent/Trustee's operations in the State of Missouri was established many months ago in the Bankruptcy Court and the jurisdictional issues raised by petitioners in this Court are now moot. Respondent/Trustee and Arkansas Farmers respectfully requests that the Petition for Writ of Certiorari be denied.

DATED at Little Rock, Arkansas, this 10th day of August, 1981.

Respectfully submitted,
Respondents/Intervenors GARY HART, *et al.*
("Arkansas Farmers")

By Their Attorney:
BILL W. BRISTOW, ESQ.
Seay & Bristow
216 East Washington
Jonesboro, AR 72401
and
ROBERT P. LINDSEY, Respondent/Chapter 11 Reorganization Trustee for Cox Cotton Company d/b/a James Grain & Cotton Co.; and Don James, Robert James and G. E. James, a general partnership, d/b/a Frisbee Cotton Company; James Grain & Elevator

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Little Rock, AR 72203

By: _____
Ben F. Arnold

Attorneys for Respondent/Trustee

APPENDICES

APPENDIX A

IN THE

CIRCUIT COURT OF RIPLEY COUNTY, MISSOURI

STATE OF MISSOURI ex rel. JOHN G. RUNYAN, Director of the Missouri Department of Agriculture, *Relator,* v. DONALD R. JAMES, ROBERT W. JAMES and GEORGE JAMES, d/b/a JAMES GIN & ELEVATOR COMPANY, located at Naylor, Missouri, *Respondents.*	Case No.

PETITION FOR APPOINTMENT OF RECEIVER

COMES NOW the State of Missouri at the relation of John G. Runyan, Director of the Missouri Department of Agriculture, by and through its attorneys, John Ashcroft, Attorney General of Missouri, and Gerald M. Sill, Assistant Attorney General, and for its cause of action states:

1. Relator, John G. Runyan, is the duly qualified, appointed and acting Director of the Missouri Department of Agriculture. The Missouri Department of Agriculture was created by Section 261.010, RSMo 1969. The office of the Commissioner of Agriculture was created by Section 261.020, RSMo 1969, and the duties and powers of the Commissioner are transferred to the Director of the Department of Agriculture pursuant to Section 2 of the Omnibus State Reorganization Act of 1974.

2. The Director of the Missouri Department of Agriculture is responsible for the implementation, administra-

tion and enforcement of the "Missouri Grain Warehouse Law", Sections 411.010 to 411.765, RSMo 1978. Pursuant to the provisions of the Missouri Grain Warehouse Law, relator issues licenses allowing the operation of public grain warehouses in Missouri as defined by Section 411.026(20) and causes the examination and audit of the quantity, quality and grade of grain stored in said licensed grain warehouses.

3. Respondents are partners operating a public grain warehouse located in Naylor, Ripley County, Missouri, and having License No. P-UR-108 issued by the Missouri Department of Agriculture.

4. Section 411.519, RSMo 1978, authorizes the Director of the Missouri Department of Agriculture, when he has evidence that a warehouseman is insolvent, to petition the circuit court for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with law.

5. On or about August 6, 1980, the Director of the Missouri Department of Agriculture received a mailgram indicating that respondents intend to file bankruptcy and impliedly are insolvent.

6. In accordance with the authority granted in such circumstances by the aforesaid Section 411.519, the only remedy available is for the appointment of a receiver to take possession of the public grain warehouse to operate or liquidate the warehouse in accordance with laws as may be appropriate.

WHEREFORE, relator prays the court:

1. That the Director of the Missouri Department of Agriculture be appointed as receiver for respondents' public grain warehouse.

2. That, after doing a complete audit and investigation

as appropriate, the receiver liquidate or operate said business as may be deemed most appropriate to protect the interests of individuals storing grain in said public grain warehouse.

3. For such other further relief as may be proper and necessary.

Respectfully submitted,

JOHN ASHCROFT
Attorney General

GERALD M. SILL
Assistant Attorney General
MBE#20843
P. O. Box 899
Jefferson City, MO 65102
(314) 751-3321
Attorneys for Relator

EXHIBIT "A"

Professional Business Management
5307 East Mockingbir Ln
Dallas TX 75206

4-019894S219003 08/06/80 ICS IPMBNGZ CSP KCMB
2 2148274210 MGM TDBN Dallas Tx 08-06 1127A EST

Missouri Department of Agriculture, Attn
Holger Danielsen
PO Box 630
Jefferson City MO 65102

This is a confirmation copy of a previously phone-delivered telegram

Reference: Cox Cotton Company, James Grain and Cotton Company, Frisbee Cotton Company, James Gin and Elevator Company, James Agri-Center, Inc., James Farm Center, Inc., Don James, G. E. James, Robert James

Please be advised this office has been retained to represent the above-entitled companies and individuals in all legal matters relating to impending bankruptcy proceedings. Direct all inquiries to this office.

Warren E. Zimmerman and Cecil Emerson
214-827-4210 Suite 710 Capital Bank Bldg
5307 East Mockingbird Ln Dallas TX 75206

11:27 EST

MGMCOMP MGM

STATE OF MISSOURI }
COUNTY OF COLE }

I, Tommy D. Hopkins, being duly sworn, state that I am the coordinator of Grain Regulatory Services for the Missouri Department of Agriculture, that I have read the foregoing petition and that the facts contained therein are true to the best of my knowledge and belief.

Tommy D. Hopkins

Sworn to and subscribed before me this _____ day of August, 1980.

Notary Public

My Commission Expires:

IN THE

CIRCUT COURT OF RIPLEY COUNTY, MISSOURI

STATE OF MISSOURI ex rel. JOHN G. RUNYAN, Director of the Missouri Department of Agriculture, *Relator,* v. DONALD R. JAMES, ROBERT W. JAMES and GEORGE JAMES, d/b/a JAMES GIN & ELEVATOR COMPANY, located at Naylor, Missouri, *Respondents.*	Case No.

ORDER APPOINTING RECEIVER

The petition of relator for the appointment of a receiver having been reviewed and duly considered under the circumstances, it is

ORDERED that John G. Runyan, Director of the Missouri Department of Agriculture, be appointed as receiver in accordance with Section 411.519.6, RSMo 1978, of respondents' public grain warehouse located in Naylor, Ripley County, Missouri, and under License No. P-UR-108 issued by the Missouri Department of Agriculture; and it is

FURTHER ORDERED that the receiver make an audit and full investigation of the financial circumstances of respondents and carry out such operation or liquidation of said public grain warehouse in order to protect the best interests of those individuals storing grain in said facility.

/s/ Rex H. Henson
Judge, Circuit Court of Ripley County

Dated: 8/12/80

Date 8/14/80

1. Court: Circuit Court of Ripley County
2. Case Number: CV 480-101 CC
3. Full style of case (including court and case number of original jurisdiction, if appellate case): State ex rel. John G. Runyan, Director of the Missouri Department of Agriculture, Relator, v. Donald R. James, Robert W. James and George James, d/b/a James Gin & Elevator Company
4. Type of litigation: Petition for Appointment of Receiver
5. Litigation type code number (see attached list): 660
6. Names of all parties involved in case, including code (AAG, AG, APE, ATA, ATD, ATP, ATR, ATY, DEF, INT, JUD, LS, PA, PLF, REL, RSP*) and appropriate comments with regard to each name such as address, phone:

Last Name	First Name & Initial		Code	Miscellaneous Information
James	Donald	E	DEF	
James	Robert	W	DEF	
James	George		DEF	
State ex rel. Runyan			PLF	

7. Listing of known docket entries and response dates, if any:
   Petition for Appointment of Receiver 8/12/80
   Order for Appointment of Receiver 8/12/80
8. Signature of AAG assigned to case:

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*AAG—Asst. Atty. Gen.; AG—Atty. Gen.; APE—Appellee; APL—Appellant; ATA—Atty. for Apellant; ATD—Atty. for Def.; ATP—Atty. for Plf.; ATR—Atty. for Rel.; ATY—Atty.; DEF—Defendant; INT—Intervenor; JUD—Judge; LS—Law Student; PA—Pros. Atty.; PLF—Plaintiff; REL—Relator; RSP—Respondent.

APPENDIX B

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: COX COTTON COMPANY d/b/a JAMES GRAIN & COTTON CO. *Debtor*	NO. J-80-154 B
IN RE: DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a FRISBEE COTTON COMPANY: JAMES GRAIN & ELEVATOR *Debtor*	NO. J-80-155 B

ORDER APPROVING INTERIM TRUSTEE APPLICATION FOR AUTHORITY TO ASSUME EXECUTORY CONTRACTS SETTING UP BANK DEPOSITORY ACCOUNTS AND PAYMENT OF FARMERS GRAIN PURCHASE CONTRACT

On this 27th day of August, 1980, comes on for hearing the application of Interim Trustee for authority to assume executory contracts and from the above styled petition and from statements of Interim Trustee, Robert P. Lindsey; from statements from the attorneys for interim trustee; attorneys from 1st Tennessee Bank, N.A., Memphis, Tennessee; attorneys for the Corning Bank, Corning, Arkansas; and from the entire record of these Chapter 7 proceedings and after proper notice of this hearing by the

Court and other matters and things before the Court, the Court finds:

1. That on or about August 12, 1980, this Court by written order appointed applicant as Interim Trustee for the Debtor. That applicant has qualified by posting the required bond.

2. That on or about August 15, 1980, this Court entered an order authorizing Interim Trustee to operate the business of the Debtor under the terms thereof and for the reasons therein stated.

3. That upon assuming his duties as Interim Trustee, applicant has determined that there are various outstanding contracts with farmers and other entities in both Arkansas and Missouri for the purchase by Debtor from said farmers of substantial quantities of milo and/or sorghum. That said contracts of purchase from farmers by the Debtor provide for delivery by farmers to the Debtor at various locations of Debtor during various times during the fall and early winter of 1980. That some of the contracts with farmers provide for delivery at "harvest" and others during certain specified months. That the price for the purchase of the milo by Debtor from farmers has been agreed upon in said contracts. That Debtor in the aggregate has contracted with farmers for the purchase of milo in the approximate amount of 74,000,000 pounds for delivery in the fall and early winter of 1980. That said purchase contracts require delivery by farmers and other entities at specified times and require payment by Debtor to farmers at said times for said milo.

4. That Debtor prior to the filing of the voluntary Chapter 7 petition entered into contracts of purchase and sale with Farmers Export Co., Kansas City, Missouri; Producers Grain Corporation, Amarillo, Texas; and Continental Grain Company of Kansas City, Missouri, for the

purchase by said companies from Debtor of substantial quantities of milo in the approximate amount of 100,000,000 total pounds. That said purchase and sale contracts were both priced and unpriced with respect to the consideration to be paid to Debtor by said companies upon delivery.

5. That Debtor in the aggregate has contracted for sale approximately 39,000,000 pounds of milo on a priced basis with Farmers Export Company. That Debtor has contracted for sale approximately 32,000,000 pounds of milo on a priced basis with Producers Grain Corporation. That in addition, Debtor has contracted for sale on an unpriced basis approximately 25,000,000 pounds of milo with Farmers Export Company. That further, Debtor has contracted for sale approximately 4,000,000 pounds of milo on a priced basis with Continental Grain Company.

6. That Debtor does not presently and may not for the foreseeable future have sufficient cash funds to complete said contracts of purchase with farmers and other entities. However, substantial profits can be realized by Debtor for the benefit of Debtor's estate and for all creditors and other interested parties if Debtor is able to negotiate an acceptable arrangement and modification of the contracts with the above companies so that cash funds may be on hand with which to pay farmers for the delivery of their milo during the fall and early winter of 1980. That it is in the best interest of the Debtor, its estate, the creditors, and other interested parties that Debtor be able to perform the above mentioned executory contracts, as modified, so that substantial revenues may be generated for the estate. That a substantial built-in profit margin is in existence for Debtor under the terms of the above contracts should it be able to perform the same.

7. That by mutual agreement, Interim Trustee for the Debtor, Farmers Export Company and Producers Grain

Corporation have determined that the various executory contracts, as modified, should be performed as follows:

A. The Interim Trustee shall assume for the benefit of the Debtors' estate all contracts for the purchase of milo entered into by the Debtor.

B. The farmers shall be paid for delivery of milo under contract with Debtor by Interim Trustee upon said grain being delivered by farmers to selected locations of Debtor not to exceed three (3) locations, with actual payments and settlements for grain delivery to be made by Interim Trustee with farmers only at Debtor's facility at Corning, Arkansas.

C. The Interim Trustee will use his best efforts to see that all contracts of the Debtor with the farmers are filled and will take such action, legal and otherwise, as is reasonably necessary, in order to enforce performance of such contracts.

D. That upon the grain being delivered to the three locations and upon farmers being paid by Interim Trustee for said delivery of milo, title to said milo shall be considered to have passed to said grain companies free and clear of any liens of any party, said title not to be affected thereafter by any adversary proceedings, cause of action or otherwise that might be filed later in these Chapter 7 cases for Debtor.

E. That Interim Trustee and the above grain companies have agreed further that deliveries of grain shall be made by Interim Trustee to said grain companies as close as possible to actual delivery dates in the various contracts for sale of the milo. Interim Trustee shall use his best efforts to meet and comply to the extent possible with said delivery dates but shall

not be penalized economically or otherwise should said delivery dates not be specifically met.

F. Interim Trustee and the above three grain companies have further agreed that delivery of the milo shall be made by Interim Trustee to said grain companies on a pro rata basis with deliveries to be prorated among the grain companies from time to time on an equitable basis in accordance with the terms of this Application. That during the course of the performance of these executory contracts as modified by Interim Trustee, the proration of the grain shall be administered by Interim Trustee and his employees in a consistent, equitable, and fair manner to carry out the intent and purpose of this Application.

G. That Interim Trustee and the above grain companies have further agreed that Interim Trustee shall use his best efforts to cause farmers to deliver the milo under contract with Debtor to the three (3) locations. That upon Interim Trustee employing his best efforts in accordance with Paragraph 7C of this Application, absolutely no claims or otherwise in any amount shall be filed by the three grain companies against Interim Trustee or the Debtor for failure to deliver the contracted quantities of milo set forth and appearing in each executory contract between Debtor and the three grain companies. The following discounts shall apply to all milo delivered to the grain companies by Interim Trustee: Test Weight—Five (5) Cents shall be deducted from the price per hundred weight for each pound below fifty-five (55) pounds. Moisture—Contract price shall be reduced by Two (2) percent for each one half (½) percent of moisture over Fourteen (14) percent. Total Damage—Five (5) cents shall be deducted from the price per hundred weight for each

one (1) percent of total damage over Five (5) percent. Foreign Material—Three (3) cents shall be deducted from the hundred weight price for each One (1) percent of foreign material over Eight (8) percent. Musty—Fifteen (15) cents shall be deducted from the hundred weight price. Sour—Twenty (20) cents shall be deducted from the hundred weight price. Weevily—Twenty (20) cents shall be deducted from the hundred weight price.

H. Interim Trustee and the above grain companies have further agreed that all contracts, priced and unpriced, between Debtor and the three grain companies shall be filled on a pro rated basis so that each grain company shall be entitled to receive a percentage of the total milo received by the Interim Trustee in the same ration that each such company's total contracted milo bears to the total 100,000,000 pounds contracted for by Debtor, so that Farmers Export Company shall receive approximately 64% of all milo received, Producers Grain Corporation shall receive approximately 32%, and Continental Grain Company shall receive approximately 4%. Adjustments shall be made, on a day to day basis to the extent possible, in deliveries made to each company in order to maintain such ratio. Payment to the Interim Trustee for satisfaction of each contract shall be made as follows:

i. Each Farmers Export Company contract, including priced and unpriced contracts, shall be filled in order that milo was to be delivered pursuant to the contracts so that those contracts calling for an earlier delivery date would be satisfied in full prior to satisfaction of any contract calling for a later delivery date. All unpriced contracts shall be priced at $5.34 per hundred weight f.o.b.

Corning by rail. All priced contracts shall be at the price shown on the original contract less 26.8¢ per hundred weight and delivery shall be made f.o.b. Corning, Arkansas, rather than as specified in each of said contracts.

ii. Each of the Producers Grain Corporation and Continental Grain Company contracts shall be priced as provided in each contract, as hereinafter modified, with the contracts being satisfied in the order in which grain was to be delivered pursuant to said contracts, with the contracts providing for the earliest delivery dates being filled prior to the filling of any contracts calling for later delivery dates. The price for each contract shall be the price originally provided for in such contract plus 12.5¢ per hundred weight which shall be added to each such contract due to freight increases. Provided, however, that such 12.5¢ shall be the only additional charge to either Producers Grain Corporation or Continental Grain Company, and, specifically, there shall be no freight differential charge added to such contracts resulting from differences in freight costs based on the origination point of the milo. All Producers Grain Corporation contracts are priced f.o.b. Corpus Christi, Texas, and all Continental Grain Company contracts are priced f.o.b. Lake Charles, Louisiana.

I. It shall be the obligation of the Interim Trustee to maintain books, ledgers, and accounts of all transactions relating to the Debtors' contracts with the farmers and the Debtors' contracts with the three (3) grain companies which are assumed as modified and all such books and records shall be available to each of the three (3) grain companies for examination at any reasonable time.

J. Farmers Export Company, Producers Grain Corporation, and Continental Grain Company shall remit to the Bank of Corning for the account of Interim Trustee by wire transfer, letter of credit, or otherwise sufficient monies not to exceed in the aggregate $100,000 at any time to enable Interim Trustee to perform the above executory contracts with farmers. The initial contributions of such funds shall be made by the three (3) grain companies, with each company remitting its proportionate share of such funds based upon each company's entitlement to participate on a pro rata basis in having its contracts filled in the manner hereinabove provided. The amount on deposit with the Bank of Corning shall be adjusted on a day to day basis as payments are made to farmers with each grain company being obligated to remit to the Bank such amounts as are necessary to cover the cost of the amount of grain received by each such grain company on a particular day so that at the beginning of each business day the Trustee shall be entitled to maintain not to exceed $100,000 in the account with which to purchase grain during that business day. The Bank of Corning has agreed to act under such arrangement and has agreed to handle all bookkeeping and record keeping as may be appropriate and necessary to carefully document the above arrangement, and the grain companies should be entitled to the Bank's written agreement to abide by such agreement before being obligated to deposit funds pursuant to the Court's Order. That payments will be made to farmers by Interim Trustee by drafts drawn on his account at Bank of Corning or by checks drawn on his account at Bank of Corning.

K. That Bank of Corning has agreed with Interim Trustee not to set off or attempt to set off any funds

in Interim Trustee's account at Bank of Corning transferred to said account for his benefit by the above grain companies with respect to any previous obligation owed the Bank of Corning by Debtor or any company affiliated with Debtor.

L. All milo may be sold by Interim Trustee to the above grain companies free and clear of any liens held by he First Tennessee Bank, N.A., Memphis, and the Corning Bank of Corning, Arkansas. However, all sales are subject to valid crop liens, and the rights of all secured creditors to the proceeds in excess of the purchase price shall be subject to the orders of this Court and as to all rights and interest therein and said interest are not diminished hereby.

8. That Continental Grain Company has until Wednesday, September 3, 1980, to elect to participate in the arrangement as provided in paragraph 7 above set out. It said Continental Grain does not file its election to participate with Court no later than said date, the Interim Trustee rejects all executory contracts held by the Debtor with Continental Grain Company. In the event Continental Grain Company does not file such election, this Order shall nonetheless remain fully enforceable and effective as to the Interim Trustee, Farmers Export Company, and Producers Grain Corporation, and all grain received by the Debtor pursuant hereto shall be pro rated between Farmers Export Company and Producers Grain Corporation.

9. The Interim Trustee or his successor shall be paid by the above named grain companies at such time as the grain purchased by said companies reaches the first grade and weight stations as provided in the contracts of purchase as above modified.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED that Robert P. Lindsey,

Interim Trustee of the Debtor, be and hereby is authorized under §365 of the Bankruptcy Code to assume the executory contracts as modified and set herein above and for the recovery of his costs herein expended.

IT IS SO ORDERED.

/s/ Charles W. Baker
Charles W. Baker, Bankruptcy Judge
Date: August 29, 1980

APPROVED:

Original Signed By
A. Jan Thomas, Jr., Atty.
A. Jan Thomas, Jr.,
One of the Attorneys for the Interim Trustee

cc: Mr. Charles Casey, Chief, Special Procedures,
Internal Revenue Service
Arkansas Department of Finance and Administration
Arkansas Employment Security Division
Arkansas State Plant Board
Missouri Department of Agriculture; Debtor
Allen Bird, Esq.
Kirby Riffel, Esq.
Stanley Langley, Esq.
Everett Gibson, Esq.
Mr. John Reams, Far Export Company
William F. Kirsch, Jr., Esq.
Craig Donelson, Esq.
Michael F. Pleasants, Esq.
Warren Dupwe, Esq.
Joe Stange, Producers Grain Corporation
Warren E. Zimmerman, Esq.
Cecil Emerson, Esq.
First Tennessee Bank, N.A. Memphis, Tennessee
The Corning Bank
Arkansas Attorney General
Scott Manett

APPENDIX C

IN THE

UNITED STATES BANKRUPTCY COURT

FOR THE EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a Frisbee Cotton Company; and James Grain & Elevator, a/k/a James Gin & Elevator Company, a general partnership, *Debtors.*	Case No. JO 80-00155

APPLICATION FOR DETERMINATION OF OWNERSHIP OF CUSTOMER-OWNED ASSETS, FOR LIQUIDATION OF CUSTOMER-OWNED ASSETS AND DISTRIBUTION OF THE PROCEEDS

COMES NOW John G. Runyan, Director of the Missouri Department of Agriculture, by and through his attorneys, John Ashcroft, Attorney General of Missouri, and Gerald M. Sill, Assistant Attorney General, and states:

1. John G. Runyan is the duly qualified, appointed and acting Director of the Missouri Department of Agriculture. The Missouri Department of Agriculture was created by Section 261.010, RSMo 1978. The Office of the Commission of Agriculture was created by Section 261.020, RSMo 1978, and the duties and powers of the Commissioner are transferred to the Director of the Department of Agriculture pursuant to Section 2 of the Missouri Omnibus State Reorganization Act of 1974.

2. The Director of the Missouri Department of Agriculture is responsible for the implementation, administration and enforcement of the "Missouri Grain Warehouse Law", Sections 411.010 to 411.765, RSMo 1978. Pursuant to the provisions of the Missouri Grain Warehouse Law, relator issues licenses allowing the operation of public grain warehouses in Missouri as defined by Section 411.026(20) and causes the examination and audit of the quantity, quality and grade of grain stored in said licensed grain warehouses.

3. Debtors' partnerships are licensed grain warehouse facilities, said facilities being located in Naylor, Ripley County, Missouri, license number P-UR-108; Caruthersville, Pemiscot County, Missouri, license number P-UR-430; New Madrid, New Madrid County, Missouri, license number P-UR-431; and Holcomb, Dunklin County, Missouri, license number P-UR-98.

4. On August 12, 1980, John G. Runyan, the Director of the Missouri Department of Agriculture, hereinafter applicant, in accordance with Section 411.519, RSMo 1978, sought from the appropriate circuit courts and obtained orders appointing him receivor of debtor's facilities described above in accordance with said section on the grounds that he had evidence that debtors were insolvent. Copies of the orders are attached as Exhibit A. Thereafter, this bankruptcy proceeding was initiated.

5. The order received by applicant as authorized by statute gave applicant authority to operate or liquidate the aforesaid grain warehouse facilities as may be deemed appropriate by said applicant.

6. In accordance with said order, applicant took control of the aforesaid Missouri public grain warehouses and commenced to conduct a complete investigation and audit

of all grain in the aforesaid facilities. A copy of said audit is attached hereto as applicant's Exhibit B.

7. As disclosed by applicant's Exhibit B, substantial amounts of grain are held by debtors, as bailees for hire, in trust for purposes of storage at the aforesaid public grain warehouse facilities.

8. Applicant suggests to the court that the interim trustee has a duty under Section 752(a) of the Bankruptcy Code to distribute the customer-owned grain or its equivalent in money, on store in debtor's facilities in accordance with appropriate proof displayed to the interim trustee subject to offset for any monies due and owing debtors relating to said grain.

9. That it is in the best interests of the individuals storing grain in debtors' facilities, and also in the best interests of debtors, that the grain be liquidated and/or equivalent monies be distributed as soon as possible in order to take advantage of optimum market conditions, and further, to prevent deterioration or loss of the grain and its value, that the interim trustee take immediate steps to liquidate the grain and distribute monies as appropriate.

10. Applicant suggests to the court that he has, in his employ, experts in the field of grain management and regulation and that he is well suited to act as the agent of the interim trustee or otherwise be of assistance in handling the sale and distribution of said assets and, further, that any participation by applicant will be done with the full assistance and cooperation of the Office of the Missouri Attorney General, and of the Office of the Missouri State Auditor.

WHEREFORE, applicant prays the court as follows:

1. For a determination that customer-owned grain held in trust by debtors (as bailees for hire) in accordance

with information contained in applicant's Exhibit B, be determined to be such and to be an asset held in trust by said debtors separate and apart from debtors' property.

2. That the interim trustee be ordered to seek proof of claims to the customer-owned grain at debtors' facilities; offset against said claims any monies due and owing debtors for storage or other charges related to said grain; liquidate grain as appropriate in debtors' facilities; and make distribution of the net claim due the grain storers either in full or pro rata as the interests of the storers may appear.

3. That the interim trustee be authorized to employ as his agent or to seek assistance from applicant in carrying out the liquidation and distribution of the customer-owned grain in debtors' facilities.

4. That the interim trustee be ordered to proceed with all due speed in respect to the requests contained in this application in order to best serve the interests of the individuals storing grain in debtors' facilities.

5. That any excess monies remaining after full distribution of customer-owned grain or its equivalent in monies be turned over to the bankruptcy estate for further administration.

6. For such other relief as may be deemed proper and necessary.

Respectfully submitted,

JOHN ASHCROFT
Attorney General

/s/ Gerald M. Sill
Gerald M. Sill
Assistant Attorney General
MBE#20843
P. O. Box 899

Jefferson City, MO 65102
(314) 751-3321
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail, postage prepaid, this 3 day of September, 1980, to: Attorneys of record for Trustee.

/s/ Gerald M. Sill

IN THE

CIRCUIT COURT OF RIPLEY COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. JOHN G. RUNYAN, Director of the Missouri Department of Agriculture, *Relator,* v. DONALD R. JAMES, ROBERT W. JAMES and GEORGE JAMES, d/b/a JAMES GIN & ELEVATOR COMPANY, located at Naylor, Missouri, *Respondents.*	Case No.

ORDER APPOINTING RECEIVER

The petition of relator for the appointment of a receiver having been reviewed and duly considered under the circumstances, it is

ORDERED that John G. Runyan, Director of the Missouri Department of Agriculture, be appointed as receiver in accordance with Section 411.519.6, RSMo 1978, of respondents' public grain warehouse located in Naylor, Ripley County, Missouri, and under License No. P-UR-108 issued by the Missouri Department of Agriculture; and it is

FURTHER ORDERED that the receiver make an audit and full investigation of the financial circumstances of respondents and carry out such operation or liquidation of said public grain warehouse in order to protect the best interests of those individuals storing grain in said facility.

/s/ Rex H. Henson
Judge, Circuit Court of Ripley County

Dated: 8/12/80

EXHIBIT "A"

IN THE

CIRCUIT COURT OE PEMISCOT COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. JOHN G. RUNYAN, Director of the Missouri Department of Agriculture,
Relator,
v.
DONALD R. JAMES, ROBERT W. JAMES and GEORGE JAMES, d/b/a FRISBEE COTTON COMPANY, located at Caruthersville, Missouri,
Respondents.

Case No.

ORDER APPOINTING RECEIVER

The petition of relator for the appointment of a receiver having been reviewed and duly considered under the circumstances, it is

ORDERED that John G. Runyan, Director of the Missouri Department of Agriculture, be appointed as receiver in accordance with Section 411.519.6, RSMo 1978, of respondents' public grain warehouse located in Caruthersville, Pemiscot County, Missouri, and under License No. P-UR-430 issued by the Missouri Department of Agriculture; and it is

FURTHER ORDERED that the receiver make an audit and full investigation of the financial circumstances of respondents and carry out such operation or liquidation of said public grain warehouse in order to protect the best interests of those individuals storing grain in said facility.

/s/ William L. Ragland
Judge, Circuit Court of Pemiscot County

Dated: 8-12-80

IN THE

CIRCUIT COURT OF NEW MADRID COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. JOHN G. RUNYAN, Director of the Missouri Department of Agriculture, *Relator,* v. DONALD R. JAMES, ROBERT W. JAMES and GEORGE JAMES, d/b/a FRISBEE COTTON COMPANY, located at New Madrid (Ristine), Missouri, *Respondents.*	Case No.

ORDER APPOINTING RECEIVER

The petition of relator for the appointment of a receiver having been reviewed and duly considered under the circumstances, it is

ORDERED that John G. Runyan, Director of the Missouri Department of Agriculture, be appointed as receiver in accordance with Section 411.519.6, RSMo 1978, of respondents' public grain warehouse located in New Madrid, New Madrid County, Missouri, and under License No. P-UR-431 issued by the Missouri Department of Agriculture; and it is

FURTHER ORDERED that the receiver make an audit and full investigation of the financial circumstances of respondents and carry out such operation or liquidation of said public grain warehouse in order to protect the best interests of those individuals storing grain in said facility.

_____

Judge, Circuit Court of New Madrid County

Dated: _____

IN THE

CIRCUIT COURT OF DUNKLIN COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. JOHN G. RUNYAN, Director of the Missouri Department of Agriculture,
Relator,

v.

DONALD R. JAMES, ROBERT W. JAMES and GEORGE JAMES, d/b/a FRISBEE COTTON COMPANY, located at Holcomb, Missouri,
Respondents.

Case No.

ORDER APPOINTING RECEIVER

The petition of relator for the appointment of a receiver having been reviewed and duly considered under the circumstances, it is

ORDERED that John G. Runyan, Director of the Missouri Department of Agriculture, be appointed as receiver in accordance with Section 411.519.6, RSMo 1978, of respondents' public grain warehouse located at Rt. #1, Marley, Dunklin County, Missouri, and under License No. P-UR-98 issued by the Missouri Department of Agriculture to serve under his official bond; and it is

FURTHER ORDERED that the receiver make an audit and full investigation of the financial circumstances of respondents and carry out such operation or liquidation of said public grain warehouse in order to protect the best interests of those individuals storing grain in said facility.

/s/ Charles H. Baker
Associate Judge, Circuit Court of Dunklin County

Dated: 8/12/80

APPENDIX D

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: DON JAMES and wife, BETTY JAMES, Individually, and d/b/a JAMES OIL COMPANY, GINNERS OIL MILL PROPERTY *Debtor*	No. J-80-153-B
IN RE: COX COTTON COMPANY d/b/a JAMES GRAIN & COTTON CO. *Debtor*	No. J-80-154-B
IN RE: DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a FRISBEE COTTON COMPANY: JAMES GRAIN & ELEVATOR *Debtor*	No. J-80-155-B

ORDER GRANTING TRUSTEE'S APPLICATION FOR ASSISTANCE OF UNITED STATES MARSHALS IN PRESERVING ASSETS OF DEBTORS

On September 11, 1980, at the U.S. Post Office and Courthouse Building, Jonesboro, Arkansas, on this Court's own motion, came on for consideration the above styled Application of the Trustee filed September 10, 1980; and from statements made in open Court by one of the duly appointed attorneys for the Trustee, Ben F. Arnold; and

from the entire record of these proceedings and the Court being aware from the Statements of Affairs that substantial assets exist in each debtor entity that are in need of preservation and protection from loss, destruction and damage; and from other things and matters considered and no party or attorney appearing in opposition to the relief requested by Trustee in the Application; the Court finds:

1. That Robert P. Lindsey is the duly appointed, qualified, and acting Trustee for each of the above captioned debtor entities and has already qualified by posting the required bond. That on September 11, 1980, by Order of this Court, Mr. Lindsey was appointed the permanent Trustee for each debtor entity. That in fact Mr. Lindsey has been the permanent Trustee since August 27, 1980, when the creditors of the debtor entities at the first meeting of creditors failed to elect a Trustee.

2. That on August 15, 1980, this Court entered an Order in each of the above Chapter 7 captioned proceedings authorizing Mr. Lindsey as Interim Trustee to operate the business of the debtors. That said Order has not been appealed from and is now final.

3. That this Court has carefully examined its jurisdiction and powers under the United States Bankruptcy Code and under other statutory provisions of federal law. Under 11 U.S.C. §105, this Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Under 28 U.S.C. §1481, a Bankruptcy Court shall have the power of a Court of equity, law, and admiralty... Under 28 U.S.C. §1471(c), the Bankruptcy Court for the District in which a case under Title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the District Courts. Under 28 U.S.C. §1471(e), the Bankruptcy Court in which a case under Title 11 is commenced shall have the exclusive jurisdiction of all

of the property, wherever located, of the Debtor, as of the commencement of such case. Further, under 28 U.S.C. §569(a), the U.S. Marshal is formally designated the marshal of the Bankruptcy Court. This Court concludes that if an Order is issued in aid of the Bankruptcy Court's jurisdiction by this Court, the marshal may execute the same pursuant to 28 U.S.C. §569(b). The Court finds and concludes that under the circumstances of these complex Chapter 7 proceedings, the most appropriate manner to protect the property and assets in the Trustee's custody and control would be through posted guards, appointed by the Marshal, and paid from the proceeds of the estate. Moreover, it is clear that the U.S. Marshal may take all necessary action as he deems necessary to preserve the peace pursuant to 28 U.S.C. §570. This Court further concludes that it has the power and jurisdiction to order the U.S. Marshal to arrest any person disturbing the property as a contempt of this Court's powers and jurisdiction. It is also clear that the U.S. Marshal may arrest any person interfering with the performance of the Marshal's duties including the protection of property under 18 U.S.C. §11.

4. The Court has been advised by the Trustee and his duly appointed counsel that presently there exists an unlawful seizure and possession of certain facilities owned by one of the above captioned debtor entities at Ristine, Missouri, in derogation of the lawful, exclusive rights of possession and control of the Trustee herein. The Court finds that the intent and purpose of the seizure of possession and/or blockade of said facilities by certain farmer-producers, residents of the State of Missouri, is and was to prevent and thwart Trustee in his fulfillment of certain milo contracts with certain farmers in Arkansas and Missouri and with three (3) grain purchasers. This Court has already entered an Order on August 29, 1980, which is now final and non-appealable, authorizing Trustee to assume

certain executory contracts as modified with three (3) grain producers. These contracts can only be fulfilled provided farmers deliver milo to the Trustee at the Ristine, Missouri facility and three (3) other facilities of the above debtors in Arkansas and Missouri. That the blockade and/or unlawful seizure of possession and control of the above facility of the Trustee in Ristine, Missouri, and any other or further unlawful activity at any other facilities of the Trustee at other locations is and will be considered by this Court to be in contempt of the power and jurisdiction of this Court which cannot be tolerated by this Court or by the Trustee, Robert P. Lindsey. That said unlawful possession, trespass and/or other activity including a blockade of the debtor's facilities interferes with the performance by Trustee of the above contracts and other duties with which he is charged under previous orders of this Court and the United States Bankruptcy Code.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED that the United States Marshal for the Eastern District of Arkansas; the United States Marshal for the Eastern District of Missouri; and the United States Marshal for any other district in which property of the Trustee on behalf of the above captioned debtor entities may be located, be and they hereby are ORDERED and DIRECTED to remove and take physical custody and possession of any equipment, personal property, or persons found to be blockading, obstructing, or in any way interfering with the facilities of the debtor entities without the expressed written permission of Trustee, Robert P. Lindsey; that the U.S. Marshals for the above districts be and they further are hereby ORDERED and DIRECTED to assist Trustee in his request to remove any person or property found to be blocking access or entrances to any of the debtor's premises wherever located; and the United States Marshals for each of the above districts be

and they hereby are ORDERED and DIRECTED further to arrest and bring before this Court any person found to be blockading, barricading, or in any other manner interfering with Trustee's capacity to operate the debtor's business in each of the above captioned proceedings; and, any such person or persons shall be brought by the United States Marshals for the above districts before this Court at Little Rock, Arkansas, to show cause, if any they have, why they should not be held in contempt of this Court under the contempt powers of this Court vested by the laws of the United States.

This Court will deliver a copy of this Order forthwith to the United States Marshals in the States of Arkansas and Missouri for implementation, action, and execution as provided by the laws of the United States including but not limited to the United States Bankruptcy Code.

ENTERED at Little Rock, Arkansas, this 15th day of September, 1980, but nunc pro tunc and effective as of September 11, 1980.

/s/ Charles W. Baker
Charles W. Baker, Bankruptcy Judge

cc: Robert P. Lindsey, Trustee
Ben F. Arnold, Esq.
A. Jan Thomas, Jr., Esq.
Warren Dupwe, Esq.
Mr. Louis French
Charles Gray, U.S. Marshal
All Attorneys of Record
All Debtors
Continental Grain Company
Farmers Export Company
Producers Grain Company

APPENDIX E

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE:
DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a FRISBEE COTTON COMPANY: JAMES GRAIN & ELEVATOR,

Debtor

No. J-80-155-B

TRUSTEE'S MOTION TO DISMISS APPLICATION FOR DETERMINATION OF OWNERSHIP OF CUSTOMER-OWNED ASSETS, THE LIQUIDATION OF CUSTOMER-OWNED ASSETS AND DISTRIBUTION OF THE PROCEEDS

Comes the Chapter 7 Trustee for the above debtor entity, Robert P. Lindsey ("Trustee"), by and through one of his duly appointed attorneys, Ben F. Arnold, and pursuant to Rule 12 of the Federal Rules of Civil Procedure made applicable herein by Bankruptcy Rule 712 and in support of his Motion to Dismiss states:

1. That applicant, John G. Runyan, Director of the Missouri Department of Agriculture, has failed to allege and state facts sufficient to give him legal standing to file this Application. That nowhere in the Application is it alleged that Mr. Runyan in his capacity as Director of the Missouri Department of Agriculture is a creditor of the

above debtor entity or has any authority whatsoever to act on behalf of creditors of the above debtor entity. That upon information and belief applicant holds no assignment of creditor claims in this proceeding. None are on file with the Bankruptcy Court. That in all respects applicant has no standing to file this Application.

2. That the Application is not in proper form as prescribed by the United States Bankruptcy Code, the Interim Rules of Bankruptcy Procedure, and the Rules of Bankruptcy Procedure in that the relief basically sought in the Application is in the nature of an adversary proceeding which is governed in all respects by Interim Bankruptcy Rules 7001 and following and by Rules of Bankruptcy Procedure 701 and following. In turn, adversary proceedings are governed by applicable Federal Rules of Civil Procedure with which this Application does not comply either in whole or in part. Trustee knows that several hundred individual farmers must be made parties defendant to any adversary proceeding or action to determine ownership of certain grain and/or sell the same free and clear of liens. The Application fails to make any parties defendants and fails to prescribe to whom notice of the Application should be sent. In addition, Trustee believes that First Tennessee Bank, N.A., of Memphis; White River Production Credit Association; Commodity Credit Corporation; The Corning Bank; The Cotton Exchange Bank, Kennett, Missouri, and perhaps other entities as well, are or may be claiming some lien, security interest, right, title, interest, equity or estate in and to the grain which is the subject of the Application. These conflicting claimants, of course, must be made parties defendants in any adversary proceeding relative to disposition of the grain or its proceeds.

3. The Application does not satisfy the requirements of Section 363(f) of the Bankruptcy Code.

WHEREFORE, the premises considered, Trustee pursuant to Rule 12 of the Federal Rules of Civil Procedure made applicable to the Bankruptcy Code and Adversary Proceedings by Rule 712 of the Rules of Bankruptcy Procedure prays that the Application filed by John G. Runyan, Director of the Missouri Department of Agriculture, be dismissed; for the recovery of his costs expended herein; and for all other proper relief to which he may be entitled.

ROBERT P. LINDSEY, *Trustee*

By His Attorneys:
WARREN DUPWE, ESQ.
P. O. Box 549
Jonesboro, Arkansas 72401
A. JAN THOMAS, JR., ESQ.
P. O. Box 1957
West Memphis, Arkansas 72301
and
DAVIDSON, PLASTIRAS, HORNE,
HOLLINGSWORTH & ARNOLD, LTD.
211 National Investors Building
Second at Broadway
P. O. Box 3363
Little Rock, Arkansas 72203

By: /s/ Ben F. Arnold
Ben F. Arnold

CERTIFICATE OF SERVICE

I, Ben F. Arnold, one of the attorneys for Robert P. Lindsey, Trustee, do hereby certify that a copy of the foregoing pleading has been served upon all attorneys of record herein by mailing a copy of same to them at their office addresses with sufficient prepaid postage this 15th day of September, 1980.

/s/ Ben F. Arnold
Ben F. Arnold

APPENDIX F

IN THE

CIRCUIT COURT OF NEW MADRID COUNTY, MISSOURI

STATE OF MISSOURI ex rel JOHN G. RUNYAN, DIRECTOR OF THE MISSOURI DEPARTMENT OF AGRICULTURE; STATE OF MISSOURI ex rel MISSOURI DEPARTMENT OF AGRICULTURE; JOHN G. RUNYAN, as Receiver of grain warehouses formerly operated by Donald R. James, Robert W. James and George E. James, Jr. located at New Madrid (Ristine), Caruthersville and Holcomb, Missouri under the business name FRISBEE COTTON COMPANY, and at Naylor, Missouri under the business name JAMES GIN & ELEVATOR COMPANY, a/k/a JAMES GRAIN & ELEVATOR COMPANY, and as Receiver of a grain warehouse operated by JAMES AGRI-CENTER, INC. as Debtor and Debtor In Possession at Neelyville, Missouri; and STATE OF MISSOURI ex rel JOHN ASHCROFT, ATTORNEY GENERAL OF THE STATE OF MISSOURI,

Plaintiffs,

v.

ROBERT P. LINDSEY, Trustee in Bankruptcy in Bankruptcy Case No. J-80-155-B in the Eastern District of Arkansas of Donald R. James, Robert W. James and George E. James Jr., partners of a General Partnership, d/b/a FRISBEE COTTON COMPANY, formerly doing business in New Madrid, Caruthersville and Holcomb, Missouri, and as Trustee in Bankruptcy in Bankruptcy Case No. J-80-155-B in the Eastern District of Arkansas of Donald R. James, Robert W. James and George E. James, Jr., partners of a General Partnership, d/b/a JAMES GIN & ELEVATOR COMPANY, a/k/a JAMES GRAIN & ELEVATOR COMPANY, formerly doing business in Naylor, Missouri; DONALD R. JAMES, ROBERT W. JAMES and GEORGE E. JAMES, JR., Co-Partners as Debtors with respect to businesses formerly conducted by them at New Madrid, Caruthersville and Holcomb, Missouri under the name Frisbee Cotton Company and formerly conducted by them at Naylor, Missouri under the name of James Gin & Elevator Company, a/k/a James Grain & Elevator Company; and JAMES AGI-CENTER, INC. as Debtor and Debtor In Possession in Bankruptcy Case No. J-80-155-B in the Eastern District of Arkansas,

Defendants.

Case No. CV180-355CC

ORDER TO SHOW CAUSE, TEMPORARY RESTRAINING ORDER AND SEIZURE ORDER WITHOUT NOTICE

This Court, having considered the Petition for Imme-

diate Possession and for Injunction filed herein on this date, and the Affidavit of John G. Runyan, Director of the Missouri Department of Agriculture, sworn to October 20, 1980; and it appearing that plaintiff Runyan was previously appointed by orders of this Court and the Circuit Courts of Dunklin County, Pemiscot County, Ripley County and Butler County, Missouri all dated August 12, 1980 (the "Receiver Orders"), pursuant to §411.519.6 of the Missouri Grain Warehouse Law, as the receiver (the "Statutory Warehouse Receiver") of the five grain warehouses previously operated by the respective defendants (other than Lindsey) at New Madrid (Ristine), Holcomb, Caruthersville, Naylor and Neelyville, each in the State of Missouri (the "Grain Warehouses"); and it further appearing that the Receiver Orders directed the Statutory Warehouse Receiver, after an audit and full investigation of the financial circumstances of the Grain Warehouses, to operate or liquidate the Grain Warehouses, as appropriate, in order to protect the best interests of those individuals storing grain in such public warehouses; and it further appearing that this Court has exclusive jurisdiction over the Statutory Warehouse Receiver and the grain in the Grain Warehouses; and it further appearing that this Court has exclusive subject matter jurisdiction of the subject of the plaintiffs' Petition herein and that the defendants are subject to the jurisdiction of this Court; and it further appearing that the police power and regulatory power of the State of Missouri are threatened and require that this Court exercise its exclusive jurisdiction over the Grain Warehouses and the grain contained therein so that such grain be rapidly distributed or liquidated as required by Missouri law; and it further appearing that the defendant Lindsey is purporting to act as a warehouseman in the State of Missouri without a license to do so, in violation of the Missouri Grain Warehouse Law, and is purporting

to act as a grain dealer in the State of Missouri without a license to do so, in violation of the Missouri Grain Dealers Law; and it further appearing that this is an action or proceeding by the plaintiffs as governmental units to enforce their police and regulatory power, the exercise of which has previously been prevented by the defendant Lindsey, as trustee, and by defendant James Agri-Center, Inc.; and it further appearing that immediate possession by the Director of Missouri Department of Agriculture and his authorized agents is necessary for the protection of depositors of grain held at the Grain Warehouses and for the protection of the holders of warehouse receipts previously issued by the Grain Warehouses; and it further appearing that irreparable injury will result unless this order is immediately granted; and it further appearing that no prior notice of the plaintiffs' Petition or of their motion upon which this order is granted is required to be given; and it further appearing that the order requested herein is necessary in aid of this Court's jurisdiction and Receiver Orders, to prevent the Receiver Orders from being rendered ineffectual and to enforce the police and regulatory powers, and good and sufficient cause having been shown for the relief requested, the Court having heard the attorneys for the plaintiffs, John Ashcroft, Attorney General, Gerald M. Sill, Assistant Attorney General and James F. Gunn, as counsel to the Attorney General,

NOW, on motion of plaintiffs, it is

ORDERED, that, pursuant to Chapter 411, RSMo, as amended, the Director and his authorized agents are hereby directed to take possession of and seize, by physical means, if required, the five Grain Warehouses as described in the plaintiffs' Petition herein and the grain and records contained therein; and it is further

ORDERED, that the Director and his authorized

agents are hereby authorized and directed to take any and all steps necessary to protect and preserve the grain and records contained in the five Grain Warehouses; and it is further

ORDERED, that the plaintiffs' motion for a temporary restraining order is granted in all respects by this order; and it is further

ORDERED, that the defendants show cause before this Court at the courthouse in New Madrid County, Missouri on November 6, 1980 at 10:30 A.M., or as soon thereafter as counsel can be heard (the "Hearing Date"), WHY an order should not be made herein enjoining and restraining the defendants and each of them, including defendant Lindsey, and their representatives, partners, officers, agents, servants, employees, attorneys and all persons acting in concert or participating with them and anyone else having notice or knowledge of this order, pending the final hearing and determination of this proceeding, from

(a) seeking, orally or in writing, or utilizing, or attempting to enforce, any order of any court, whether or not presently issued, concerning, involving or affecting the subject matter of the present proceeding, including without limitation (1) any order purporting to excuse defendant Lindsey from answering and responding to the within Petition, (2) any order which would purport to stay or enjoin the further prosecution of this proceeding or the enforcement of any statute of the State of Missouri, or (3) any order purporting to require any of the plaintiffs to show cause why they should not be held in contempt of any court;

(b) commencing or further prosecuting any proceedings in any court other than this Court, whether or not now pending, involving any or all of the subject matter of this proceeding;

(c) taking any action or steps in defendant Lindsey's adversary proceeding pending in the bankruptcy court in Arkansas under Nos. J-80-154-B and J-80-155-B as against any of the several hundred individual defendants therein who are depositors of grain or holders of receipts issued by any of the five Missouri Grain Warehouses, and from noting any purported default by any of such defendants therein or from otherwise affecting their ownership of or rights in such grain in any manner;

(d) moving, transferring or removing any of the grain now contained in any of the five Missouri Grain Warehouses referred to in the Petition herein;

(e) interfering in any manner with the Statutory Warehouse Receiver, his agents or employees, in the exercise of their rights or the performance of their duties pursuant to this order, the Receiver Orders or the Missouri Grain Warehouse Law or the Missouri Grain Dealers Law; and

(f) from purporting to act or acting as a warehouseman or operating or purporting to operate a warehouse in the State of Missouri or from acting as a grain dealer in Missouri or from accepting shipments of or making delivery of any grain from any of the Grain Warehouses until such time, if any, as defendant Lindsey is issued a license as warehouseman or grain dealer, as the case may be, and cures any defaults by him pursuant to the law of the State of Missouri; and it is further

ORDERED, that pending the determination by this Court of the plaintiffs' Motion for Preliminary Injunction to be heard on the Hearing Date, the defendants and each of them, and their representatives, partners, officers, agents, servants, employees, attorneys and all persons acting in concert or participating with them and anyone else

having notice or knowledge of this order be and they hereby are, restrained and enjoined from:

(a) seeking, orally or in writing, or utilizing or attempting to enforce, any order of any court, whether or not presently issued, concering, involving or affecting the subject matter of the present proceeding, including without limitation (1) any order purporting to excuse defendant Lindsey from answering and responding to the within Petition, (2) any order which would purport to stay or enjoin the further prosecution of this proceeding or the enforcement of any statute of the State of Missouri, or (3) any order purporting to require any of the plaintiffs to show cause why they should not be held in contempt of any court;

(b) commencing or further prosecuting any proceedings in any court other than this Court involving any or all of the subject matter of this proceeding;

(c) taking any action or steps in defendant Lindsey's adversary proceeding pending in the bankruptcy court in Arkansas under Nos. J-80-144-B and J-80-155-B as against any of the several hundred individual defendants therein who were depositors of grain or holders of receipts issued by any of such five Missouri Grain Warehouses, and from noting any purported default by any of such defendants therein or from otherwise affecting their ownership of or rights in such grain in any manner;

(d) moving, transferring or removing any of the grain now contained in any of the five Missouri Grain Warehouses referred to in the Petition herein;

(e) interfering in any manner with the Statutory Warehouse Receiver, his agents or employees, in the exercise of their rights or the performance of their duties pursuant to this order, the Receiver Orders or the Missouri

Grain Warehouse Law or the Missouri Grain Dealers Law; and it is further

ORDERED, pursuant to the Missouri Grain Warehouse Law and the Missouri Grain Dealers Law, that pending the determination of the Motion for a Preliminary Injunction or the issuance to defendant Lindsey of a license as a warehouseman or grain dealer pursuant to the law of the State of Missouri, defendant Lindsey is enjoined and restrained from acting or purporting to act as a warehouseman or grain dealer in the State of Missouri and is enjoined and restrained from operating or purporting to operate any of the Grain Warehouses and from accepting shipments of or making delivery of any grain from any of the Grain Warehouses; and it is further

ORDERED, this order shall not be stayed or set aside unless and until such time as this Court, after hearing, determines that possession should be restored to the warehouseman; and it is further

ORDERED, that any response, including any memorandum of law, pleadings, motions and affidavits, by or on behalf of any of the defendants to the Motion of the plaintiffs for a Preliminary Injunction shall be served personally on Missouri Assistant Attorney General, Gerald M. Sill, at 8th Floor, Broadway State Office Building, Jefferson City, Missouri, not later than ten (10) days prior to the Hearing Date; and it is further

ORDERED, that personal service of a copy of this order and the papers upon which it has been granted upon the defendant Lindsey by delivering copies thereof to his office located at 5206 Sherwood Road, Little Rock, Arkansas, or by delivering copies thereof to his attorney, Ben F. Arnold, 211 National Investors Life Building, Little Rock, Arkansas, on or before 6 P.M. on October 22, 1980, be, and

the same hereby is, good and sufficient service hereof and thereof; and it is further

ORDERED, that service of a copy of this order and the papers upon which it has been granted upon each of the defendants (other than defendant Lindsey), by mailing copies thereof by United States prepaid first class mail, addressed to them at their last known addresses, on or before October 22, 1980, be, and the same hereby is, good and sufficient service hereof and thereof; and it is further

ORDERED, that the Director of the Department be, and he hereby is, directed to send a copy of this order by mail to each known grain depositor at his last known address; and it is further

ORDERED, that the Director of the Department be, and he hereby is, directed to cause publication of a copy of this order on two separate occasions in a newspaper of general circulation in each of New Madrid, Pemiscot, Butler, Ripley and Dunklin Counties in Missouri.

/s/ William L. Ragland
Hon. William L. Ragland
Circuit Judge
Circuit Court
New Madrid County
Missouri

Dated: October 20, 1980

APPENDIX G

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE:
STATE OF MISSOURI; STATE OF MISSOURI EX REL JOHN G. RUNYAN, AS DIRECTOR OF THE MISSOURI DEPARTMENT OF AGRICULTURE; STATE OF MISSOURI EX REL MISSOURI DEPARTMENT OF AGRICULTURE; JOHN G. RUNYAN, AS RECEIVER OF CERTAIN GRAIN WAREHOUSES; AND STATE OF MISSOURI EX REL JOHN ASHCROFT, ATTORNEY GENERAL OF THE STATE OF MISSOURI,
Petitioners

No. J-C-80-244

ORDER

On November 18, 1980, J. Gary Hart, James C. Hart, Rudy Gazaway, Jr., Delono Edington, James Edington, David Graham, Bill Richardson, J. H. Bryant, Lavern Weinsenbach, Billy Baltz, Larry Kueter, J. H. Lamb, W. H. Pride, Jr., Coldman Luttrell, Jerry Little, Bobby Brooks, Willard Books, Jerry D. Cherry, David Ungerank, John Ungerank, Bob Wren, Martin Wren, Gene T. Cox, Tom Liebhaber, Bud Liebhaber, J. T. Kirk, Hubert Brodell, Raymond Mock, Bill Holifield, Jim Allison, Mrs. J. D. Layton, Mike Layton, Dorothy C. Wright, Williard D. Cox,

Ivan E. Alexander, Gary Gazaway, Jimmy Cole, Carlton Throesch, Ed Watson, Allen Johnson, Faye Duff, Shaver J. Dunn, Danny Johnson, Vicent Manning, Russell Johnson, Phyllis Burrow for Cherry Estates, Lonnie Little, Marshall Little, Rick Little, and Larry Waddell moved for leave to intervene in this proceeding.

Movants allege that their grain, which was stored in the debtors' warehouses in Arkansas, has been transferred to warehouses owned by debtors, in Missouri and involved here; that since there are competing claims to the grain stored in the Missouri warehouses, the matter should be resolved in the Bankruptcy Court where the debtor companies have filed their petition.

While the Court feels that because of the extraordinary nature of a Writ of Prohibition it might be better for movants to proceed as amici curiae, the Court is persuaded that since movants claim a direct interest in the grain in controversy and their attorney was allowed to participate in oral argument with the acquiescence of the parties, movants should be, and they are hereby, granted permission to intervene in this case, and the Clerk is directed to file the pleading accompanying movants' motion.

IT IS SO ORDERED this 25th day of November, 1980.

/s/ George Howard, Jr.
United States District Judge

APPENDIX H

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ARKANSAS

IN RE:
STATE OF MISSOURI Ex Rel JOHN G. RUNYAN, Director of the Missouri Department of Agriculture; STATE OF MISSOURI Ex Rel MISSOURI DEPARTMENT OF AGRICULTURE; JOHN G. RUNYAN, as Receiver of certain grain warehouses; and STATE OF MISSOURI Ex Rel JOHN ASHCROFT, Attorney General of the State of Missouri,
Petitioners

No. J-C-80-244

ORDER PERMITTING INTERVENTION

ORDERED:

That Robert P. Lindsey, Trustee for Cox Cotton Company d/b/a James Grain & Cotton Co. (Chapter 11 debtor in Case No. J-80-154-B) and Chapter 11 reorganization Trustee for Don James, Robert James and G. E. James, a general partnership, d/b/a Frisbee Cotton Company; James Grain & Elevator a/k/a James Gin & Elevator (Chapter 11 debtor in Case No. J-80-155-B) be, and he is hereby, authorized to intervene in the above-captioned case as a party-respondent.

Dated this 17th day of November, 1980.

/s/ George Howard, Jr.
United States District Judge

APPENDIX I

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: COX COTTON COMPANY d/b/a JAMES GRAIN & COTTON CO. *Debtor*	No. J-80-154-B
IN RE: DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a FRISBEE COTTON COMPANY; JAMES GRAIN & ELEVATOR *Debtor*	No. J-80-155-B

ROBERT P. LINDSEY, TRUSTEE ..... *Plaintiff*

v. Adv. Proc. No. 800414

FIRST TENNESSEE BANK, N.A. — MEMPHIS, a national banking association, *et al.* ..... *Defendants,*

ORDER AUTHORIZING TRUSTEE TO SELL ALL GRAIN STORED IN DEBTORS' WAREHOUSES IN THE STATE OF ARKANSAS

On the 2nd day of February, 1981, at 10:00 a.m. came on for hearing and trial the Trustee's Complaint to Sell Grain Free and Clear of Liens ("Complaint") filed herein September 23, 1980, as amended on October 17, 1980, and on January 16, 1981; and from the Complaint; from various answers and responses filed by farmers who are residents

of Arkansas and Missouri; from the Answer of the United States; from the Answer of First Tennessee Bank, N.A.—Memphis; from the Answer of The Corning Bank; and from other answers and/or responses filed by other defendants to this adversary proceeding; from that certain Order and Notice of Hearing entered by this Court on January 12, 1981, setting this adversary proceeding for hearing for February 2, 1981; at 10:00 O'Clock a.m. at the U.S. Post Office and Courthouse Building, Little Rock, Arkansas, insofar as it relates to the sale of the Arkansas grain free and clear of liens; from statements of Ben F. Arnold, Warren Dupwe, and A. Jan Thomas, Jr., attorneys representing plaintiff, Robert P. Lindsey, Trustee; from statements of Robert Branch and Scott Manatt, attorneys representing The Corning Bank; from statements of Bill W. Bristow, attorney representing certain Arkansas and Missouri farmers claiming to own grain situated in debtors' warehouses in the State of Arkansas; from statements of Bob Ross, an attorney for the Arkansas State Plant Board; from statements of William F. Kirsch and Craig Donaldson, attorneys representing First Tennessee Bank, N.A.—Memphis; from statements of Donald McCartney and Claude Skelton, attorneys representing the Commodity Credit Corporation, Mr. McCartney being employed by the United States Department of Justice; from testimony taken ore tenus at the bar of this Court from Jim Lacy, Head, Grain Division, Arkansas State Plant Board; from Jim Hovis, an employee of the Trustee; from Louis French, administrative assistant to the Trustee; from Robert P. Lindsey, Trustee for the above captioned debtor entities; from Rudy Gazaway, one of the farmer-defendants represented by Bill W. Bristow; from the testimony of George W. Harrison, an employee of the United States Department of Agriculture; from the testimony of Eric Jones, an employee of the United States Department of Agri-

culture; from the testimony of Gary Coleman, an employee of the United States Department of Agriculture; and from the testimony of David Bell, Chief of Claims and Collections Division of the Agriculture Stabilization and Conservation Service; from all exhibits introduced into evidence through the above witnesses; from all pleadings in this adversary proceeding and from other things and matters considered and the Court being well and sufficiently advised as to all matters of law and fact herein, finds:

1. That it has jurisdiction of the subject matter of this adversary proceeding and over all parties in accordance with 28 U.S.C. §1471; 28 U.S.C. §1481; 11 U.S.C. §105; 11 U.S.C. §363, and other relevant provisions of the United States Bankruptcy Code, the Rules of Bankruptcy Procedure, and the Interim Bankruptcy Rules.

2. That all parties hereto have had due process notice of the hearing and trial in this adversary proceeding as it relates to whether the grain stored in debtors' warehouses in the State of Arkansas should be sold at this time by the Trustee, the method of sale if the sale should be approved, and other matters related to the sale, if authorized. That this Court entered on January 12, 1981, a certain Order and Notice of Hearing setting the above matter for hearing and trial on February 2, 1981, at 10:00 a.m. at the above place which Order and Notice of Hearing was mailed by the Clerk of this Court and/or the Trustee to all parties entitled to receive the same under the United States Bankruptcy Code, the Rules of Bankruptcy procedure, and the Interim Bankruptcy Rules.

3. That matters relative to the sale of all grain have been previously stayed on two separate occasions by orders of the Eighth Circuit Court of Appeals after proper notice was given of the hearing and trial. That by Order dated January 5, 1981, the United States Court of Appeals for

the Eighth Circuit released from a previous stay order matters relative to the sale of the Arkansas grain only.

4. The only parties to this adversary proceeding presenting testimony at the trial at the U.S. Post Office and Courthouse Building, Little Rock, Arkansas, on February 2, 1981, at 10:00 a.m., were the Trustee, Robert P. Lindsey; certain farmer-clients represented by Bill W. Bristow; and the Commodity Credit Corporation, an instrumentality of the United States. No other parties offered any testimony in support or in opposition to the relief requested by the Trustee.

5. No creditors or other interested parties appeared at said hearing who desired their appearance noted of record.

6. No party or attorney who appeared at said hearing voiced any objection or opposition to the sale by the Trustee of the grain stored in debtors' warehouses in the State of Arkansas and in fact all parties appearing at said hearing were in agreement that from the testimony presented that the grain should be sold by the Trustee free and clear of liens with all valid liens and ownership claims, if any, to attach to the sale proceeds, all as authorized by 11 U.S.C. §363(f). That all parties were in agreement that the grain was deteriorating, was in danger of spoiling and that the grain should in fact be sold.

7. The Court further finds that Trustee should be and he hereby is authorized to sell all grain stored in debtors' warehouses in the State of Arkansas as a sale under 11 U.S.C. §363(b) other than in the ordinary course business which was authorized after notice and hearing.

8. The Court further finds that the sale herein authorized is being done with the express consent of all parties hereto and without the opposition of any entity claiming an interest in the commodities.

9. The Court further finds that each entity who is a party to this adversary proceeding has consented to the proposed sale by the Trustee in accordance with 11 U.S.C. §363(f)(2) and that all interests of the entities are in a bona fide dispute in accordance with 11 U.S.C. §363(f)(4).

10. The Court further finds that Trustee in the course of the sale of the commodities in question shall maintain and establish separate books and accounts for the proceeds of the sale by location and by commodity. Trustee be and he hereby is specifically authorized to deduct from the gross sale proceeds and deposit to his regular operating account or accounts such sums as are the reasonable and necessary costs and expenses from and after February 2, 1981, of preserving and disposing of the commodities as authorized by 11 U.S.C. §506(c).

11. The Court does hereby appoint a committee composed of Mr. Rudy Gazaway (a farmer-defendant), a representative to be designated by First Tennessee Bank, N.A. —Memphis who is not an attorney, and a representative to be designated by the Commodity Credit Corporation who is not an attorney to advise with and consult with the Trustee, Robert P. Lindsey, concerning the method, manner, and timing of the sale of the various commodities now situated in debtors' warehouses in the State of Arkansas. The members of the committee shall serve without compensation and at no cost to the Trustee and/or the debtor entities.

12. The Court further finds that the request of the Commodity Credit Corporation, an instrumentality of the United States, that it have and be able to exercise veto power over any judgment or decision of the Trustee in respect to his method of sale of any of the commodities should be and hereby is overruled and denied. The Court believes and from past experiences has every confidence

that the Trustee will exercise prudent business judgment in all matters relative to the sale. One of the purposes in this Court appointing a Trustee is for that individual to make complicated and complex decisions regarding the business affairs of debtor entities undergoing Chapter 11 reorganization proceedings. This Court will not, therefore, set specific guidelines as to when the Trustee should sell the commodities in question and by what method.

13. The Court finds that the Trustee, Robert P. Lindsey, should be given broad powers and discretion in selling and marketing the commodities in question and that Trustee using his best judgment in a prudent manner should determine the method, manner, and timing of the sale of the commodities. In this regard, this Court expects Trustee to be guided in part by the terms, provisions, and conditions of *Ark. Stat. Ann.* §58-302 dealing with the "exercise of judgment and care required" by fiduciaries and trustees handling trust estates. The Court further finds that the Trustee shall also be guided by other general principles governing duties and responsibilities required of trustees in administering estates not only under the above provision of Arkansas law but also under the relevant provisions of the United States Bankruptcy Code and other equitable principles governing responsibilities of fiduciaries in disposing of property in similar situations.

14. The Court further finds that Trustee should invest and reinvest, using his best judgment and discretion, all of the net sale proceeds in one or more certificates of deposit or other interest bearing obligations all as authorized and pursuant to 11 U.S.C. §345 dealing with "money of estates". This Court will not designate nor prescribe the institution or institutions in which Trustee should invest and reinvest said funds and will not prescribe the mode or manner of such investment. Trustee shall select

the institution or institutions in which said funds should be invested but shall maintain careful books and records of such investments by commodity and by location.

15. Trustee is specifically authorized to employ additional clerical help and assistance as may be reasonably necessary to carry out the terms of this Order authorizing the sale of the grain stored in debtors' warehouses in the State of Arkansas and so that proper and carefully maintained records may be in existence for inspection by any interested party and/or their attorney upon reasonable notice being given.

16. The Court further finds the existing $1,000,000 bond of the Trustee to be adequate, but will, upon request being made at some later time by any interested party consider increasing the bond.

17. The Court further finds that the nature, validity, and extent of all ownership claims, lien claims, or other claims of whatever kind or nature in and to the net proceeds from the sale of the commodities herein authorized shall be fully heard and determined by this Court at some later time pursuant to the appropriate notice and opportunity for hearing consistent with the needs of the parties.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED that Trustee's Complaint to sell grain situated in debtors' warehouses in the State of Arkansas free and clear of liens with all valid liens and ownership claims, if any, to attach to the net sale proceeds be and the same hereby is approved, authorized, and granted; that all entities who are parties hereto have consented to the proposed sale by Trustee under 11 U.S.C. §363(f)(2) or the interests of all entities is in bona fide dispute under 11 U.S.C. §363(f)(4); that this sale is found to be a sale authorized under 11 U.S.C. §363(b) as one

other than in the ordinary course of business after notice and hearing; that in the course of the selling of the commodities, Trustee shall maintain separate books and accounts for the proceeds of the sale by commodity and by location; that Trustee may deduct from the gross sale proceeds and deposit to his regular operating account or accounts such sums as are the reasonable and necessary costs on and after February 2, 1981, of preserving and disposing of the commodities under 11 U.S.C. §506(c); that a committee shall be established composed of Mr. Rudy Gazaway, a representative of First Tennessee Bank, N.A.—Memphis who is not an attorney, and a representative of Commodity Credit Corporation who is not an attorney to advise with and consult with Trustee concerning the method, manner, and timing of the sale of the various agricultural commodities; that Trustee is to exercise his best prudent judgment and discretion as to the method, manner, and timing of the sale of the commodities in accordance with all relevant laws and statutes of the State of Arkansas dealing with the powers and duties of trustees and fiduciaries and in accordance with similar principles contained in the United States Bankruptcy Code, the Rules of Bankruptcy Procedure, and the Interim Bankruptcy Rules; that this Court will not set specific guidelines as to when, how, and in what manner Trustee should sell and market the commodities in question since that is the exclusive responsibility of a Chapter 11 Trustee under these circumstances; that, further, Trustee is ordered to invest and reinvest in one or more certificates of deposit or other interest bearing obligations in one or more financial institutions of his choice all of the net proceeds of the sale until such time as this Court after notice and hearing shall determine the nature, extent, and validity of ownership claims, lien claims, and other claims in and to the net sale proceeds; that the request of the Commodity Credit

Corporation that it have veto power over the method of sale chosen by the Trustee be and expressly hereby is denied; and this Court retains jurisdiction over other matters in this adversary proceeding and over all parties hereto to hold additional hearings and enter additional orders as may be necessary and appropriate to protect the best interests of all concerned.

IT IS SO ORDERED.

/s/ Charles W. Baker
Charles W. Baker, Bankruptcy Judge
Date: Feb. 4, 1981

cc: Robert P. Lindsey, Trustee
Ben F. Arnold, Esq.
Warren Dupwe, Esq.
A. Jan Thomas, Jr., Esq.
Mr. Louis French
Gerald Dudley, C.P.A.
Scott Manatt, Esq.
Bill Bristow, Esq.
Robert Branch, Esq.
Bob Ross, Esq.
William F. Kirsch, Esq.
Craig Donaldson, Esq.
Donald McCartney, Esq.
Claude Skelton, Esq.
All Attorneys of Record
All Debtors
All Creditors Committees
Mr. George Proctor, U.S. Attorney
Securities and Exchange Commission
Paul Williams, District Director, IRS
U.S. Treasury Department

APPENDIX J

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: COX COTTON COMPANY, d/b/a JAMES GRAIN & COTTON COMPANY	J 80-154
IN RE: DON JAMES, ROBERT JAMES, and G. E. JAMES, A GENERAL PARTNERSHIP d/b/a FRISBEE COTTON COMPANY, JAMES GRAIN & ELEVATOR CO.	J 80-155
ROBERT P. LINDSEY, TRUSTEE, *Plaintiff*	AP 80-414

VS.

FIRST TENNESSEE BANK, N.A., *et. al., Defendants*

ORDER

Comes now the Court in the above captioned matter on its own motion and pursuant to motions previously filed herein by parties in interest and finds that the following matters should come on before the Court seriatim in the order below described at 9:30 a.m. C.D.T., Monday May 18, 1981 in the Bankruptcy Courtroom, Room 445, United States Courthouse and Post Office Building, 600 West Capitol, Little Rock, Arkansas 72201:

1) Trustee's motion to sell free and clear of all liens and

encumbrances all grain of the debtor entities stored in Missouri warehouse and grain elevators.

2) Trustee's motion for the determination of entitlement to and ownership of all interest proceeds of grain account escrow funds.

3) Resolution of the entitlement of any party to a jury trial determination of its equity interest in any property of the debtor entities.

4) Appointment by the Court of a master to make to it suggested findings of fact and conclusions of law with respect to competing ownership interests of all party claimants to grain stored in Arkansas and in Missouri warehouses and grain elevators of the debtor entities, and elsewhere.

5) Motion of the trustee to assess certain fees for the storage both before and after the entry of the orders of relief herein of certain grain allegedly owned by the Commodity Credit Corporation, an agency of the Department of Agriculture of the United States Government.

In addition, the Court finds that a pre-trial hearing on all issues to be tried, as above described, should be held at the aforesaid Bankruptcy Courtroom on Friday May 8, 1981 at 10:30 a.m. C.D.T. for the purpose of determining deadlines for the exchanging of briefs and lists of witnesses and exhibits; for narrowing the questions of fact to be determined; and for any other matter which may at that time come on before the Court.

SO ORDERED THIS 22nd DAY OF APRIL, 1981

/s/ Charles W. Baker
Charles W. Baker
Bankruptcy Judge

APPENDIX K

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: COX COTTON COMPANY, d/b/a JAMES GRAIN & COTTON COMPANY *Debtor*	No. J-80-154-B
IN RE: DON JAMES, ROBERT JAMES, and G. E. JAMES, a general partnership, d/b/a FRISBEE COTTON COMPANY; JAMES GRAIN & ELEVATOR *Debtor*	No. J-80-155-B
ROBERT P. LINDSEY, TRUSTEE, *Plaintiff* v. FIRST TENNESSEE BANK, N.A.—MEMPHIS, a national banking association, *et. al.*, *Defendants*	ADV. PROC #800414

MEMORANDUM OPINION ON TRUSTEE'S MOTION TO SELL ALL GRAIN SITUATED IN DEBTOR'S WAREHOUSES IN THE STATE OF MISSOURI AND IN MISSOURI FARMERS ASSOCIATION, INC. ELEVATOR AT BERNIE, MISSOURI

On the 18th and 19th of May, 1981, at the U.S. Post Office and Courthouse Building, Little Rock, Arkansas,

came on for hearing and trial Trustee's Motion in the above captioned adversary proceeding for authority from this Court to sell free and clear of liens under 11 U.S.C. §363(f) all grain presently situated in Trustee's warehouses in the State of Missouri and approximately 31,000 bushels of soybeans presently stored in an elevator facility owned and maintained by Missouri Farmers Association, Inc., a defendant hereto, at Bernie, Missouri. Due process notice of the hearing was given all parties and their attorneys and other entities by order of this Court dated April 22, 1981, which was mailed to all of the above by the Clerk of this Court. A pre-trial conference was held on Friday, May 8, 1981, at the U.S. Post Office and Courthouse Building, Little Rock, Arkansas, beginning at 10:30 a.m. which was attended by many of the attorneys representing defendants herein. On Tuesday, April 21, 1981, an informal conference of attorneys was held with this Court on certain issues related to the sale of the Missouri grain by Trustee free and clear of liens. That conference was also attended by many of the attorneys representing parties herein. In addition, on May 8, 1981, this Court entered another Order giving all parties, their attorneys and other entities notice of the hearing on Monday, May 18, 1981, at the U.S. Post Office and Courthouse Building, Little Rock, Arkansas, at 9:30 a.m. on plaintiff's Motion to Sell all Grain situated in debtors' warehouses and elevators in the State of Missouri, including the grain at Bernie, Missouri, free and clear of liens. The Order required not later than 5:00 p.m. Central Daylight Time, Friday, May 15, 1981, the filing of an original and one copy of a memorandum brief if so desired by any party as to any legal issue in controversy herein; an original and twelve (12) copies of a list detailing the name, address, and a summary of the expected testimony of any witness to be called; numbered exhibits to be produced at the hearing; and an original and twelve (12) copies of a list

of all persons, if any there be, and their addresses, who have been subpoenaed, along with a delineation of the documents, if any, which that person has been commanded to bring with him, and a summary of what the party expects to establish by means of such witness and/or such documents. That particular order was mailed by the Clerk of this Court to all parties, their attorneys, and other entities on May 8, 1981.

The Court finds that Trustee's Complaint to Sell the Missouri Grain Situated in Debtor's Elevator Facilities Free and Clear of Liens was filed originally September 23, 1980, and has been amended for various reasons on four (4) different occasions, the most recent being May 6, 1981. From time to time, additional defendants have been added as parties defendants in order that whatever rights, claims, or other interests, whether legal or equitable, said additional parties defendants might have in and to the grain in question and/or the sale proceeds if the grain should be ordered sold might be determined herein. Many parties have answered or otherwise responded to Trustee's Complaint, as amended. Other parties have not yet answered; but, this Court has not yet entered any default judgments against any defendant or defendants in favor of Trustee and does not intend to do so for at least the foreseeable future.

The Court finds that this particular adversary proceeding has been stayed on two separate occasions by stay orders entered by the United States Court of Appeals for the Eighth Circuit. The first stay order was dated October 21, 1980, and the second stay order was entered December 22, 1980. The stay orders were entered at the insistence of the State of Missouri and certain officials and/or instrumentalities of that state including, but not limited to, the Department of Agriculture of the State of Missouri and the

Attorney General of the State of Missouri and one or more of the state appointed receivers for the James debtor warehouses situated in the State of Missouri. The Court finds further that matters relative to the merits of the appeal over this Court's jurisdiction over the grain situated in debtors' warehouses in the state of Missouri were held in abeyance pending settlement negotiations between the parties to litigation in the United States District Court for the Eastern District of Arkansas and in the Eighth Circuit Court of Appeals. However, during the month of February, 1981, the parties to the consolidated appeals in the Eighth Circuit Court of Appeals advised that Court that further settlement negotiations at that time would not be productive and that oral argument should be scheduled on the merits of the consolidated appeals as to whether this Court had jurisdiction over the Missouri grain in debtors' warehouses administered by Trustee. On March 11, 1981, oral argument on the issues was had by counsel for the parties before the United States Court of Appeals for the Eighth Circuit. On April 8, 1981, the Eighth Circuit Court of Appeals handed down its Opinion and Order finding that this Court did in fact have exclusive jurisdiction over the grain situated in debtors' warehouses in the State of Missouri and that this Court had full jurisdiction, power, and authority to determine the adverse claims, including ownership claims to said grain and the proper disposition of the grain.

This Court has carefully reviewed the Memorandum Opinion and Order entered by the United States Court of Appeals for the Eighth Circuit and is cognizant of the directives entered by that Court in affirming the Memorandum Opinion and Order of the United States District Court for the Eastern District of Arkansas dated December 2, 1980.

The Court further finds that in response to this Court's

Order dated May 8, 1981, there have been filed certain pre-trial briefs by various parties on the issues discussed at the pre-trial conference. This Court has carefully considered the pre-trial briefs filed by the Trustee, Robert P. Lindsey, the plaintiff in this adversary proceeding; the pre-trial brief filed by defendant, Wayne Cryts, individually and as representative of certain of the Cryts farming entities located in the State of Missouri; the pre-trial brief filed by Mr. Richard Ramsay, an attorney for other Missouri farmers situated in the Ristine, Missouri, area; and a pre-trial brief filed by Mr. Bill Bristow, who represents certain Arkansas farmers who are claiming an interest in certain grain allegedly transferred from various of the debtors' warehouses in the State of Arkansas to elevators maintained by the James debtor entities in the State of Missouri. The Court has also examined other pre-trial pleadings filed by the parties and their attorneys relative to a summary of the expected testimony of witnesses and proposed exhibits that might be introduced at the hearing.

The Court is also aware that on May 15, 1981, Trustee filed a Motion for Judgment on the Pleadings and/or Motion for Summary Judgment regarding the alleged entitlement of Trustee to judgment under Rules 12(c) and 56 of the Federal Rules of Civil Procedure on certain issues joined in this adversary proceeding under 11 U.S.C. §363(f)(4)(5). Trustee's counsel advised the Court at the beginning of the hearing on May 18, 1981, of the relief therein requested. The Court took the same under advisement pending receipt of testimony and evidence.

At the hearing, the Trustee, Robert P. Lindsey, appeared in person and by his duly appointed attorneys, Ben F. Arnold, Warren Dupwe, and A. Jan Thomas, Jr. Wayne Cryts, one of the defendants, and certain of the Cryts farming interests were represented by Mr. Baker Kurrus.

Richard Ramsay, an attorney practicing at Pine Bluff, Arkansas, appeared on behalf of certain Missouri farmers situated in the Ristine, Missouri, area except Wayne Cryts. Mr. Kurrus was assisted at the hearing by Mr. Richard Jones, a Missouri attorney at law. First Tennessee Bank, N.A.—Memphis was represented at the hearing by Mr. William F. Kirsch and Mr. Craig Donaldson, attorneys at law, who reside in Memphis, Tennessee. Certain Arkansas farmers claiming an interest in the Missouri grain and/or the sale proceeds should the grain be ordered sold by this Court were represented by Mr. Bill Bristow, attorney at law, Jonesboro, Arkansas. Mr. Bristow also appeared on behalf of certain farmers represented by Mr. John Burris, attorney at law, Pocahontas, Arkansas. The Corning Bank was represented by Mr. Robert Branch, attorney at law, Paragould, Arkansas, and by Mr. Scott Manatt, attorney at law, Corning, Arkansas. IGF Insurance Company, the bonding company for the James debtor entities having elevator facilities in the State of Missouri, was represented by Mr. O. H. Storey, III, of Little Rock. Mr. Fred Harrison of Little Rock represented David Lawrence and G. M. Lawrence Farming Corporation of Missouri. Commodity Credit Corporation, an instrumentality of the United States, was represented at the hearing by Mr. Donald McCartney, an attorney at law with the United States Department of Justice; by Mr. Arnold Grundeman, Washington, D. C., counsel for the Commodity Credit Corporation; and by Mr. Claude Skelton, local counsel for the United States Department of Agriculture at Little Rock. The debtor entities and certain of the individual James family members were represented by Mr. Warren Zimmerman, attorney at law, Dallas, Texas. No creditor and/or party without counsel desired to appear of record.

The Court has carefully read all pleadings filed in this adversary proceeding relative to pending issues as to the

ownership of the Missouri grain, adverse claims to the Missouri grain, and whether the Missouri grain should be sold by Trustee free and clear of liens under 11 U.S.C. §363(f) or whether Trustee should be ordered by this Court to return some or all of the grain to certain defendants hereto. Without objection of any party, all claims filed against the James debtor entities in cases administered by Trustee were incorporated into the record of this proceeding by reference. Testimony was taken from the following witnesses: Robert P. Lindsey, Trustee for Cox Cotton Company, an Arkansas corporation, d/b/a James Grain & Cotton Company; Don James, Robert James, and G. E. James d/b/a Frisbee Cotton Company and James Gin & Elevator Company, general partnerships; and Don James and wife Betty James, individually and d/b/a James Oil Company and Ginners Oil Mill Property. Testimony was also taken from Mr. Louis French, an assistant to the Trustee who oversees on a daily basis the Trustee's general operating office at Corning, Arkansas. Testimony on behalf of certain Arkansas farmers was taken from Jim Allison, one of the farmer parties represented by Bill W. Bristow. Testimony was also taken from Wayne Cryts, Gary Hannah, and Tommy D. Hopkins, witnesses appearing on behalf of Wayne Cryts and other farmers situated in the Ristine, Missouri, area. Testimony was also taken from Mr. David Bell, Chief of Claims and Collections Division of the Agriculture Stabilization and Conservation Service. Various exhibits were introduced through the testimony of the above witnesses and have been examined by this Court. The Court also heard arguments of counsel for some of the parties after the close of all testimony and after all parties had rested.

From all of the above, the Court makes the following findings of fact:

1. Chapter 7 bankruptcy petitions were filed on Au-

gust 11, 1980, by all of the debtor entities for which Robert P. Lindsey of Little Rock is acting as now Chapter 11 Trustee. On September 11, 1980, Robert P. Lindsey was appointed permanent Chapter 7 Trustee after being appointed Interim Chapter 7 Trustee under previous orders of this Court dated August 11 and August 12, 1980. On September 22, 1980, by order of this Court at the request of certain of the Chapter 7 debtors, Cox Cotton Company, an Arkansas corporation, and the two Missouri general partnerships (Frisbee Cotton Company and James Gin & Elevator) the same were converted from Chapter 7 to Chapter 11 under the appropriate provisions of the United States Bankruptcy Code. Contemporaneously with the conversion of said cases from Chapter 7 to Chapter 11, Robert P. Lindsey of Little Rock was appointed Chapter 11 Trustee for said debtor entities.

2. At all times herein mentioned, Robert P. Lindsey has acted as either Chapter 7 or Chapter 11 Trustee for all of the above James debtor entities and has qualified as such by having posted with this Court a joint $1 million bond in favor of the United States, the State of Arkansas, and the State of Missouri.

3. Prior to the date of the filing of the Chapter 7 petitions, the James debtor entities for which Mr. Lindsey is serving as Trustee bought, sold, and stored grain of various kinds in both Arkansas and Missouri. Offices of Cox Cotton Company were generally maintained at Corning, Piggott, Biggers, Reyno, Pocahontas, and West Memphis, Arkansas. Operations of Frisbee Cotton Company, a general partnership, were maintained at Holcomb, Missouri; Caruthersville, Missouri; and Ristine, Missouri. The operations of James Gin & Elevator, a general partnership, were maintained primarily at Naylor, Missouri.

4. The Missouri Department of Agriculture upon re-

ceiving information from the United States Department of Agriculture, began auditing the books, records, and warehouse facilities of the James debtor entities' Missouri operations as early as mid-July, 1980, and continued to monitor said operations including a surveillance program of said operations for several months thereafter. Audit reports were made by the Missouri Department of Agriculture in July, August, and September of 1980. Later audit reports were made by the Missouri Department of Agriculture and the United States Department of Agriculture (Commodity Credit Corporation) in December, 1980, February of 1981, and May of 1981. Some of these audit reports were introduced into evidence at the hearing. The amounts and measurements of grain and other facts contained in the audit reports varied to some extent due to differences in measurement, statistical error, and different quantities of grain on hand for one reason or another at different times. Some discrepancies in amounts of grain claimed by some of the farmers was also noted.

5. The entire record of this hearing supports the Trustee's contention that there are conflicting adverse claims to the Missouri grain and that such claims are in a good faith, bona fide dispute as among the various parties, including the Trustee. Certain Missouri farmers (primarily those located in the Ristine, Missouri, area) claim that soybeans allegedly in storage at Trustee's elevator facility at Ristine, Missouri, should be returned to them in kind since there are no bona fide adverse claims to the soybeans. They contend ownership of the soybeans should be vested in them as a matter of law. The Court rejects this contention. The undisputed evidence clearly shows an inventory of soybeans at the date of the petition at the Ristine elevator of Frisbee Cotton Company in an amount of approximately 100,000 bushels or thereabouts. The testimony of the Trustee and audit records of the

Missouri Department of Agriculture received into evidence indicate farmer claims against the soybeans of at least 96,989.92 bushels. However, testimony of the Trustee and the proof of claim of First Tennessee Bank, N.A.—Memphis filed against the Frisbee Cotton Company debtor entity indicates total negotiable warehouse receipts for soybeans at the Ristine location of 10,500 bushels. When these claims are added together, it is clear that an insufficient amount of soybeans is on hand to satisfy all conflicting adverse claims to the soybeans. Further, the Trustee is claiming to own outright some or all of the soybeans not only at Ristine, but in other elevators of the debtor entities in the State of Missouri. The Court finds these claims as to ownership to have a substantial basis in fact and are asserted in good faith and are bona fide. It is at once apparent that should this Court or some appellate court determine that the outstanding warehouse receipts of First Tennessee Bank, N.A.—Memphis are void and invalid under the laws of the State of Missouri, Trustee would have a legitimate claim to ownership of the overage of the soybeans at the Ristine elevator. This amount would be at least 3,000 bushels or thereabouts. No other party has any ownership claim to the overage of soybeans at Ristine. Trustee also claims to own some or all of the soybeans also claimed by farmers at Ristine. These claims of ownership are predicated on a previous sale pre-petition of the soybeans to the Ristine elevator owned by Frisbee Cotton Company with the price to be set or established at some later time at the option of the farmer. These claims are based on contentions of the Trustee that title to the soybeans passed to the debtor entity at the time of delivery across the scales, that the soybeans were in fact not stored and title did not remain in the individual producers. These claims of ownership by the Trustee to the soybeans claimed by the farmers raise serious legal issues under Missouri

law which can only be decided after a full hearing and trial. The Court finds that no negotiable warehouse receipts were ever issued at the Ristine facility at the time soybeans or other grain was delivered to the Ristine facility. This occurred only at some later time at considerable difficulty upon the request of an individual producer or other entity. Ordinarily, requests were made for the issuance of warehouse receipts for loan purposes or so that a landlord could substantiate his alleged claim to ownership of the grain. Warehouse receipts at Ristine with respect to soybeans cover approximately 68,467 bushels of the soybeans in inventory with a smaller amount (28,522 bushels) being represented by non-negotiable scale tickets. The Court finds that there are bona fide disputes among the parties as to the validity of each individual warehouse receipt and scale ticket at not only Ristine, but other elevators in Missouri operated pre-petition by the debtor entities and now by Trustee. There is also a question as to the present holders of at least some of the receipts. It appears that some of the warehouse receipts may have been surrendered to the debtor entities prior to the filing of the petition but that the individual producer was not paid. It also appears that certain of the warehouse receipts and/or scale tickets may have been surrendered pre-petition and the individual producer paid by an insufficient fund check drawn on Frisbee Cotton Company. At least two of these checks were issued at the Ristine elevator of Frisbee Cotton Company pre-petition. It also appears from the evidence that many of the Missouri farmers who are claiming to have soybeans stored at the Ristine elevator of the debtor entities and who allegedly own them under negotiable warehouse receipts have in fact pledged these negotiable warehouse receipts to Commodity Credit Corporation for a pre-petition loans. From the evidence, it appears that a vast majority of the Ristine farmers have pledged by delivery

and endorsements their warehouse receipts to Commodity Credit Corporation and have not redeemed the same at the time of this hearing. Under Missouri law, it is clear that the Trustee and/or the debtor entities would not be obligated to return any agricultural commodities to these farmers absent a tender of the outstanding negotiable warehouse receipt.

6. Although there has been much argument and testimony concerning the legitimacy or validity of warehouse receipts allegedly issued to First Tennessee Bank, N.A.—Memphis by Cox Cotton Company on forms apparently not approved and authorized by the Department of Agriculture of the State of Missouri, nevertheless a full determination of the validity, nature, and extent of the claims of First Tennessee Bank under said warehouse receipts must await some later determination after a full evidentiary hearing. It is clear that First Tennessee Bank, N.A.—Memphis is making a valid, bona fide claim under said warehouse receipts which are included in their proof of claim filed against Frisbee Cotton Company herein. At least some of these warehouse receipts were executed by Don James, without question one of the partners in Frisbee Cotton Company, a general partnership. There is no evidence in the record that First Tennessee Bank, N.A.—Memphis did not make the outstanding loans in question in good faith to Frisbee Cotton Company. The original loan was $500,000 but is presently less than that as to principal. There is no question but that the money was disbursed to this debtor entity. There is no evidence in this record that said claim has been waived and/or abandoned by this creditor. At the hearing, one of the attorneys for First Tennessee Bank, N.A.—Memphis, Craig Donaldson, in open Court offered to produce the oral testimony of an officer of the bank but it was stated to the Court that said testimony would only be duplicitous of evidence already in the record regarding

the Bank's claim under the warehouse receipts covering the Missouri grain. The Court finds from the undisputed evidence that the Bank has alleged negotiable warehouse receipts covering 8,000 bushels of wheat and 10,500 bushels of soybeans at Ristine; 12,500 bushels of soybeans and 24,600 bushels of milo at Holcomb; 54,000 bushels of milo at Caruthersville; and 25,000 bushels of wheat and 85,000 bushels of milo at Naylor. It is also clear to the Court that First Tennessee Bank, N.A.—Memphis and The Corning Bank, Corning, Arkansas, are claiming to have USS security interests in the debtors' inventory at all locations in Missouri including Ristine, Missouri. The Court knows, however, that these interests have been objected to by the Trustee and are likewise in dispute.

7. The Court is also convinced that at all other locations of Trustee's debtor entities (Naylor, Caruthersville, and Holcomb, Missouri), there is a shortage of grain which prevents the satisfaction of all adverse claims to said grain except for 364 bushels of wheat at Holcomb, Missouri, which apparently is not owned by any adverse claimant and is the undisputed property of the Trustee. Also, it appears at Caruthersville, Missouri, from the record there is a small overage of wheat sufficient in amount to fully satisfy claims of Commodity Credit Corporation assuming the quantity and quality of the grain is proper; but, this Court further finds that that particular creditor desires the wheat sold at Caruthersville along with all other grain in Missouri. Therefore, as a matter of fact, based on the testimony and the exhibits before this Court, there is not enough grain inventory on hand at any location with which to satisfy all outstanding adverse claims assuming their validity which this Court does not now determine and which has not yet been determined. No claims have been allowed by this Court with respect to any of the grain.

Also, at any given location, the grain could be short in both quantity and quality thereby further preventing redelivery.

8. From the record, it is also clear that a substantial amount of grain has been moved from the State of Arkansas to the State of Missouri apparently by the management of the Arkansas based debtor entity known as Cox Cotton Company. It is not clear to the Court the purpose of the movement of this grain interstate, but it is apparent that most if not all of the grain was moved to the Holcomb, Missouri, location of Frisbee Cotton Company. There is no clear evidence that any of the grain was moved from Arkansas to Ristine, Missouri. However, there is testimony before this Court indicating transfer of grain from Neelyville, Missouri (the location of James Agri-Center, Inc., a debtor-in-possession in a related James proceeding in this Court), to Holcomb, Missouri. This transfer consisted of approximately 22,000 bushels of soybeans. There is also some indication that grain which should be stored at Naylor, Missouri, in fact is now stored at Holcomb, Missouri, for whatever reason. Certain Arkansas farmers are claiming to have at least an equitable claim to the grain transferred from Arkansas to Missouri. The Court finds that the movement of some grain is shown from the testimony of the Trustee and an exhibit introduced through his testimony and other witnesses which only complicates the process of unraveling all of the claims to the grain. From the testimony and exhibits, in excess of 34,000 bushels of soybeans have been moved from Arkansas to Missouri, and apparently received at the Holcomb, Missouri, location of Frisbee Cotton Company. A small amount of wheat and milo apparently also was moved interstate from Arkansas to Missouri.

9. The Commodity Credit Corporation has filed extensive proofs of claims with the Trustee and with this Court against the Chapter 11 debtor entities being ad-

ministered by Trustee. This defendant has also filed responsive pleadings in this adversary proceeding detailing the basis of its claim to some of the Missouri grain in the elevators. All of the claims against the Missouri grain of the Commodity Credit Corporation are represented by warehouse receipts allegedly held outright by the Commodity Credit Corporation or pledged to it by certain farmers, primarily residents of Missouri, having claims to the Missouri grain. The Commodity Credit Corporation has possession of these warehouse receipts as security for outstanding loans to the farmers. The Court finds that the Commodity Credit Corporation apparently is claiming about 73% of all grain situated in the State of Missouri in the debtors' warehouses administered by Trustee. It is clear that the Commodity Credit Corporation as well as all other parties have a legitimate bona fide claim to a substantial amount of the Missouri grain. It is also clear that neither the Commodity Credit Corporation nor Missouri farmers have paid the Trustee any storage fees on the grain post-petition and for some time in certain instances pre-petition. The Trustee claims that approximately $450,000 in storage is due him as of this time from the depositors of the Missouri grain. Issues over the storage claims of the Trustee are pending in a related matter in this adversary proceeding.

10. Although the testimony as to the deterioration of the grain in Missouri is somewhat in conflict, the Court is persuaded and convinced that the Missouri grain cannot be preserved indefinitely without considerable risk to the quality of the grain and without substantial costs being incurred by Trustee in attempting to preserve the grain at each of the debtors' locations in Missouri. The undisputed testimony from Louis French and from the Trustee indicates a substantial ongoing cost of at least $16,000 per month in attempting to care for, preserve, and protect the

grain. No storage has been paid to the Trustee by the individual Missouri depositors or Commodity Credit Corporation after the filing of the petitions on August 11, 1980. It is obvious to the Court that a substantial economic burden exists with respect to the Trustee's ability to continue to store the grain. As the warm months of summer approach, further insect damage to the grain can be expected as well as problems with hot spots and further crusting of the grain. The Trustee in April of 1981 spent approximately $37,000 of the estates' funds to spray and treat the grain, said process having been done commercially by Terminex Company at the request of the Trustee. A future application will likely be necessary at considerable cost if the grain is not sold. It makes no sense to a court of equity that Trustee should be required to continue to store the grain awaiting some determination months or years in the future as to the exact ownership, lien claims, and other interests in and to the grain. Trustee cannot return the grain to any particular adverse claimant without considerable risk and perhaps personal exposure. This the Court will not require under these extraordinary circumstances.

11. The Court further finds from the testimony that the Trustee has been having minor security problems at the Ristine elevator with regard to petty thefts. It is not clear to the Court that these conditions are entirely related to the storage of the grain. The Court finds also from the undisputed testimony that the ongoing storage of the grain in the elevator facilities in Missouri of Trustee's debtor entities are probably inhibiting an early sale of these facilities although it can never be known for certain why a particular facility will not sell.

12. The Court further finds that on February 18, 1981, the United States Court of Appeals for the Eighth Circuit entered its Order authorizing and directing the Missouri

Farmers Association, Inc. through R. A. Young, Executive Vice President, to take possession of approximately 30,000 bushels of grain (soybeans) at that time in the possession of Wayne Cryts and others physically located in approximately 77 vehicles at the Missouri Farmers Association, Inc. exchange in Bernie, Missouri, and to hold said grain until further order of that Court. The order of the Eighth Circuit Court of Appeals recited the transfer of the grain was authorized without prejudice to any rights to the grain which existed prior to February 16, 1981. In said order, the United States Court of Appeals for the Eighth Circuit further directed that the Missouri Farmers Association, Inc. be paid its reasonable and customary handling and storage charges according to the posted tariff by the United States Marshals Service subject to appropriate reimbursement as may be determined at a later date. This Court finds that approximately 30,000 to 31,000 bushels of soybeans (the exact quantity depending upon records maintained by Missouri Farmers Association, Inc. at the Bernie, Missouri, facility) are within the jurisdiction of this Court and subject to valid orders of this Court for all purposes. The Court finds that all references herein to Missouri grain situated in Trustee's elevators in the State of Missouri shall also refer for all purposes to the above quantity of grain now in the physical custody of Missouri Farmers Association, Inc. at Bernie, Missouri.

From the above findings of fact, the Court makes the following conclusions of law:

1. That this adversary proceeding has been properly commenced by Trustee as plaintiff under the United States Bankruptcy Code, the Rules of Bankruptcy Procedure, and the Interim Bankruptcy Rules. That each party hereto has had actual due process notice of all formal pre-trial conferences and the hearing on this matter conducted May 18 and

19, 1981, at the U.S. Post Office and Courthouse Building, Little Rock, Arkansas.

2. That all issues with respect to whether Trustee should be permitted to sell the Missouri grain free and clear of liens and on what terms have been properly joined.

3. That this Court has jurisdiction over the relief requested by Trustee and all related matters in this adversary proceeding in accordance with 28 U.S.C. §1471; 28 U.S.C. §1480; 28 U.S.C. §1481; 11 U.S.C. §105; 11 U.S.C. §363; 28 U.S.C. §1651; and the applicable Rules of Bankruptcy Procedure and the Interim Bankruptcy Rules.

4. For purposes of 11 U.S.C. §363, property of the estate is involved as that term is defined under 11 U.S.C. §541. All grain in debtors' warehouses at Naylor, Ristine, Holcomb, and Caruthersville, Missouri, is property of the estate as is the approximately 31,000 bushels of soybeans stored in a Missouri Farmers Association, Inc. warehouse at Bernie, Missouri.

5. Under 11 U.S.C. §363(f)(4), Trustee may sell property of the estate free and clear of any interests in such property of an entity other than the estate if such interest is in bona fide dispute which as a matter of law this Court finds that Trustee has shown by a preponderance of the evidence and to the satisfaction of this Court as is required by the above section of the United States Bankruptcy Code.

6. There is sufficient evidence before the Court indicating that Trustee has a substantial ownership claim at each elevator maintained by the debtor entities in the State of Missouri in addition to a UCC lien claim for storage and perhaps other incidental claims to satisfy all requirements of 11 U.S.C. §363 and to permit Trustee to sell all grain free and clear of liens.

7. The interest in the grain at each location is in a

bona fide dispute as among various creditor claimants.

8. As a matter of law under various provisions of the Missouri Uniform Commercial Code and the Missouri Grain Warehouse Law for purposes of 11 U.S.C. §363(f)(5), various entities claiming the grain could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest. That the provisions of Missouri law which cause this Court to reach this conclusion are fully set forth in the pre-trial brief of the Trustee and include Missouri Revised Statutes 400.7-206; 400.7-209; 400.7-210; 411.519(6); and 411.671. That under the laws and the statutes of the State of Missouri, as a matter of law the Trustee in this type of situation (where in addition the warehouseman can compel interpleader relief under Missouri Revised Statute 411.7-603) can compel the adverse claimants to the grain to take a money satisfaction of their interests. The Court concludes that any other conclusion of law would be inappropriate under the peculiar facts and circumstances of this proceeding and would subject Trustee to possible multiple liability and even personal exposure should this Court hold otherwise.

9. The Court further finds as matter of law under the peculiar facts and circumstances of this adversary proceeding and based on the evidence before this Court and even should this question not be governed under Missouri substantive law, nevertheless, under principles of law applicable to general equitable proceedings, and in particular applicable to interpleader relief proceedings, the Trustee could not feel secure in distributing the grain to one group or class of adverse claimants well knowing that other adverse claimants were making good faith conflicting claims to the same property. Under the circumstances, this Court feels that any court of equity using its inherent equitable powers would order the grain sold.

10. The Court further concludes as a matter of law that not only would it unduly complicate matters for the Trustee to even attempt to make a redelivery of the grain, but the same could well expose him to personal liability and favor one class of claimants over another since no claims to the grain have yet been finally adjudicated by this Court as to validity, nature, priority, and/or value. The Trustee simply does not know to any reasonable degree of certainty what amount of grain the debtor entities started with at each location and the Trustee has no way of knowing in any exact sense the present quantity or quality of the grain at each location. The Court also knows from the testimony that it will take four (4) to six (6) months to sell, deliver, and receive payment of the grain if the process is started in the immediate future. During this period of time, the quality of the grain could well change and the condition of the grain could well deteriorate further. Should redelivery of the grain occur, the first few recipients might well receive a fair quantity of the grain in good condition but later recipients might not receive any grain or it any at all and it could be in a vastly different and/or inferior condition. At the end of the redelivery process, there might not be enough grain to cover all demands. The Court rejects this proposal and contention of certain Missouri farmers as being totally inequitable and impractical under the circumstances and the evidence presented.

11. The Court further concludes as a matter of law that under 11 U.S.C. §506(c), Trustee is entitled to recover from the property sold all reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim. The Court will not award to Trustee at this time or assess against the sale proceeds of the grain any amount for Trustee's fees, attorneys' fees, or accountants' fees. These issues shall be expressly reserved for determination by this

Court or a master appointed by this Court at some later time. The Court does know, however, that Trustee will incur substantial direct expenses in selling the Missouri grain and that many problems will be encountered by Trustee in selling, marketing, and delivering the Missouri grain over the next four to six months. Therefore, the Trustee be and he hereby is specifically authorized to deduct from the gross sale proceeds and deposit to his regular operating account or accounts such sums as are the reasonable and necessary costs and expenses from and after May 19, 1981, of preserving and disposing of the commodities as authorized by 11 U.S.C. §506(c). Trustee is ordered to keep a careful record and accounting of all such reasonable and necessary costs and expenses and to report the same to this Court in the course of the filing of his interim operating reports.

12. The Court further concludes as a matter of law that the sale proceeds of the grain must be kept separate by commodity and by location and that Trustee in the course of the sale of the commodities in question at each location shall maintain and establish separate books and accounts for the proceeds of the sale by location and by commodity. An inspection of the Trustee's books and accounts may be made by any attorney representing any defendant hereto upon reasonable request being made and notice given to the Trustee or his accountants or attorneys.

13. The Court further concludes as a matter of law that as to specific guidelines as to when, how, and in what manner the Trustee should sell the Missouri grain, this Court shall not specifically so determine. The Court concludes as a matter of law that the Trustee, Robert P. Lindsey, should be given broad powers and discretion in selling and marketing the Missouri grain in question and that Trustee, using his best judgment and in a prudent

manner, should determine the method, manner, and timing of the sale of the commodities. In this regard, as a matter of law, this Court expects Trustee to be guided in part by the terms, provisions, and conditions, of *Ark. Stat. Ann.* §58-302 dealing with the "exercise of judgment and care required" by fiduciaries and trustees handling trust estates. The Court further finds and concludes as a matter of law that the Trustee shall also be guided by other general equitable principles governing duties and responsibilities required of trustees in administering estates not only under the above provisions of Arkansas law but also under relevant and appropriate provisions of Missouri law and under the United States Bankruptcy Code governing responsibilities of fiduciaries in disposing of personal property in similar situations.

14. The Court further concludes as a matter of law that the Trustee should and must invest and reinvest, using his best judgment and discretion, all of the net sale proceeds in one or more certificates of deposit or other interest bearing obligations all as authorized and pursuant to 11 U.S.C. §345 dealing with "money of estates". This Court will not designate nor prescribe the institution or institutions in which Trustee should invest and reinvest said funds and will not prescribe the mode or manner of such investments. Trustee shall be permitted to select the institution or institutions in which said funds must be invested but shall maintain careful books and records of such investments by commodity and by location at all times. Trustee is ordered to make certain that the financial institution or institutions in which said funds are invested fully comply with all the requirements of 11 U.S.C. §345 with respect to deposit of funds with the Federal Reserve Bank in their locale.

15. The Court further concludes as a matter of law

that Trustee be and should be authorized to employ additional clerical help, assistance, and labor as may be reasonably necessary to carry out the terms and provisions of this Memorandum Opinion and orders entered pursuant hereto authorizing the sale of all grain situated in debtors' warehouses in the State of Missouri and the grain stored at Bernie, Missouri, in a Missouri Farmers Association, Inc. facility so that proper and carefully maintained records may be in existence for inspection and review as above set forth.

16. The Court further concludes as a matter of law that the existing $1 million bond of the Trustee is adequate under the circumstances, but will, upon request being made at some later time by any interested party or entity, consider increasing the bond. The Court does conclude, however, that any increase in Trustee's bond premium attributable directly to increased cash funds coming into his hands arising from the sale of the Missouri grain shall be assessed against the sale proceeds of the Missouri grain.

17. The Court further concludes as a matter of law that "adequate protection" under 11 U.S.C. §361 has been met and satisfied by Trustee since this Court concludes as a matter of law that all ownership claims, lien claims, UCC security interests, equitable claims, storage claims, landlord claims, and whatever other claims may exist to the net sale proceeds shall specifically attach to said proceeds and shall be fully heard and determined by this Court at some later time pursuant to the appropriate notice and opportunity for hearing consistent with the needs of the parties and their attorneys.

18. Separate orders will be entered by this Court consistent with this Memorandum Opinion authorizing the sale of all Missouri grain free and clear of liens and interests at each location of the debtor entities being administered by Trustee.

DATED at Little Rock, Arkansas, this 27 day of May, 1981.

/s/ Charles W. Baker
Charles W. Baker, Bankruptcy Judge

cc: Robert P. Lindsey, Trustee
Ben F. Arnold, Esq.
Warren Dupwe, Esq.
A. Jan Thomas, Jr., Esq.
Richard Steele, Esq.
Mr. Louis French
Gerald Dudley, C.P.A.
Scott Manatt, Esq.
Bill Bristow, Esq.
Robert Branch, Esq.
Bob Ross, Esq.
William F. Kirsch, Esq.
Craig Donaldson, Esq.
Donald McCartney, Esq.
Claude Skelton, Esq.
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Gerald Sill, Esq.
Robert L. Brown, Esq.

Fred Harrison, Esq.
All Attorneys of Record
All Debtors
All Creditors Committees
Mr. George Proctor, U.S. Attorney
Securities and Exchange Commission
Paul D. Williams, District Director, IRS
U.S. Treasury Department

APPENDIX L

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: COX COTTON COMPANY d/b/a JAMES GRAIN & COTTON CO. *Debtor*	No. J-80-154-B
IN RE: DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a/ FRISBEE COTTON COMPANY; JAMES GRAIN & ELEVATOR *Debtor*	No. J-80-155-B

ROBERT P. LINDSEY, TRUSTEE ..... *Plaintiff*

v. Adv. Proc. No. 800414

FIRST TENNESSEE BANK, N.A. — MEMPHIS, a national banking association, *et. al.* ..... *Defendants*

ORDER AUTHORIZING TRUSTEE TO SELL SOYBEANS SITUATED IN MISSOURI FARMERS ASSOCIATION, INC. ELEVATOR AT BERNIE IN THE STATE OF MISSOURI

In accordance with and pursuant to the Memorandum Opinion of this Court dated May 27, 1981, finding that Trustee should be authorized to sell all grain situated in an Missouri Farmers Association, Inc. elevator at Bernie,

Missouri, free and clear of liens pursuant to 11 U.S.C. §363(f)(4)(5) and pursuant to inherent equitable powers of a court of equity possessed by this Court under 28 U.S.C. §1481 and pursuant to interpleader relief available to Trustee in a court of equity.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED that Robert P. Lindsey, Trustee for each of the above captioned debtor entities, be and he hereby is authorized to sell free and clear of all liens and interests for the highest and best cash price obtainable consistent with this Court's Memorandum Opinion dated May 27, 1981, and the restrictions therein contained, all soybeans now stored at the Missouri Farmers Association, Inc. elevator facility at Bernie, Missouri, and originally deposited at said elevator on or about February 18, 1981, by Wayne Cryts and others, said quantity of soybeans amounting to approximately 30,000 bushels, upon terms consistent with the above Memorandum Opinion of this Court, with all ownership claims, UCC security interests, UCC storage liens, landlords' liens, equitable claims, encumbrances, and otherwise to attach to the net sale proceeds so that said claimants may be assured of "adequate protection" under 11 U.S.C. §361; Trustee is further ORDERED to maintain a separate accounting with respect to the net sale proceeds received from the sale of this quantity of soybeans, it appearing to the Court that said soybeans were removed by defendant, Wayne Cryts, and other persons from the Ristine elevator facility of Frisbee Cotton Company on or about February 16, 1981, and delivered to the above Missouri Farmers Association, Inc. facility at Bernie, Missouri, on or about February 18, 1981.

IT IS SO ORDERED.

ENTERED at Little Rock, Arkansas, this 27 day of May, 1981.

/s/ Charles W. Baker
Charles W. Baker, Bankruptcy Judge

cc: Robert P. Lindsey, Trustee
Ben F. Arnold, Esq.
Warren Dupwe, Esq.
A. Jan Thomas, Jr., Esq.
Mr. Louis French
Gerald Dudley, C.P.A.
Scott Manatt, Esq.
Robert Branch, Esq.
Bill Bristow, Esq.
Bob Ross, Esq.
William F. Kirsch, Esq.
Craig Donaldson, Esq.
Donald McCartney, Esq.
Claude Skelton, Esq.
Baker Kurrus, Esq.
Richard L. Ramsay, Esq.
Richard Jones, Esq.
O. H. Storey, III, Esq.
Arnold Grundeman, Esq.
John Burris, Esq.
Joe Morphew, Esq.
John A. Clark, Esq.
Vernon J. King, Esq.
C. W. Knauts, Esq.
Guy Brinkley, Esq.
W. J. Walker, Esq.
James F. Gunn, Esq.
Gerald Sill, Esq.
Robert L. Brown, Esq.

Fred Harrison, Esq.
All Attorneys of Record
All Debtors
All Creditors Committees
Mr. George Proctor, U.S. Attorney
Securities and Exchange Commission
Paul D. Williams, District Director, IRS
U.S. Treasury Department

APPENDIX M

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE:
COX COTTON COMPANY d/b/a JAMES GRAIN & COTTON CO.
Debtor

No. J-80-154-B

IN RE:
DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a/ FRISBEE COTTON COMPANY; JAMES GRAIN & ELEVATOR
Debtor

No. J-80-155-B

ROBERT P. LINDSEY, TRUSTEE ..... *Plaintiff*

v. Adv. Proc. No. 800414

FIRST TENNESSEE BANK, N.A. — MEMPHIS, a national banking association, *et. al.* ..... *Defendants*

ORDER AUTHORIZING TRUSTEE TO SELL GRAIN SITUATED IN DEBTORS' ELEVATORS IN NAYLOR, MISSOURI

In accordance with and pursuant to the Memorandum Opinion of this Court dated May 27, 1981, finding that Trustee should be authorized to sell all grain situated in the debtors' elevators for which he is Trustee in the State of Missouri free and clear of liens pursuant to 11 U.S.C. §363(f)(4)(5) and pursuant to inherent equitable powers

of a court of equity possessed by this Court under 28 U.S.C. §1481 and pursuant to interpleader relief available to Trustee in a court of equity,

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED, AND DECREED that Robert P. Lindsey, Trustee for each of the above captioned debtor entities, be and he hereby is authorized to sell free and clear of all liens and interests for the highest and best cash price obtainable consistent with this Court's Memorandum Opinion dated May 27, 1981, and the restrictions therein contained, all milo presently situated at Trustee's elevator facility at Naylor, Missouri, with the net proceeds from the sale of the grain from said elevator facility to be held, invested, and reinvested by Trustee consistent with the terms of the above Memorandum Opinion and with all valid ownership claims, UCC security interests, storage liens, landlords' liens, equitable liens, and other encumbrances to specifically attach to the net sale proceeds all as permitted by 11 U.S.C. §363(f) so that all claimants may be assured of "Adequate protection" under 11 U.S.C. §361 pending further orders of this Court; Trustee is further ORDERED to maintain separate books and records for each commodity sold at said elevator location.

IT IS SO ORDERED.

/s/ Charles W. Baker
Charles W. Baker, Bankruptcy Judge
DATE: May 27, 1981

cc: Robert P. Lindsey, Trustee
Ben F. Arnold, Esq.
Warren Dupwe, Esq.
A. Jan Thomas, Jr., Esq.
Mr. Louis French
Gerald Dudley, C.P.A.

Scott Manatt, Esq.
Robert Branch, Esq.
Bill Bistrow, Esq.
Bob Ross, Esq.
William F. Kirsch, Esq.
Craig Donaldson, Esq.
Donald McCartney, Esq.
Claude Skelton, Esq.
Baker Kurrus, Esq.
Richard L. Ramsay, Esq.
Richard Jones, Esq.
O. H. Storey, III, Esq.
Arnold Grundeman, Esq.
John Burris, Esq.
Joe Morphew, Esq.
John A. Clark, Esq.
Vernon J. King, Esq.
C. W. Knauts, Esq.
Guy Brinkley, Esq.
W. J. Walker, Esq.
James F. Gunn, Esq.
Robert L. Brown, Esq.
Fred Harrison, Esq.
All Attorneys of Record
All Debtors
All Creditors Committees
Mr. George Proctor, U.S. Attorney
Securities and Exchange Commission
Paul D. Williams, District Director, IRS
U.S. Treasury Department

APPENDIX N

IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF ARKANSAS

Jonesboro Division

IN RE: DON JAMES, ROBERT JAMES and G. E. JAMES, a general partnership, d/b/a FRISBEE COTTON COMPANY; JAMES GRAIN & ELEVATOR *Debtor*	No. J-80-155-B

AGREEMENT FOR PURCHASE AND SALE OF MILO, SOYBEANS, WHEAT, AND CORN ("AGREEMENT")

This Agreement made and entered into this 24th day of June, 1981, by and between Robert P. Lindsey, Chapter 11 Reorganization Trustee for Don James, Robert James, and G. E. James, d/b/a Frisbee Cotton Company and James Grain & Elevator a/k/a James Gin & Elevator, general partnerships, (hereinafter referred to as "Trustee"); and, Bearhouse, Inc., an Arkansas corporation, (hereinafter referred to as 'Buyer");

WITNESSETH:

WHEREAS, the United States Bankruptcy Court for the Eastern District of Arkansas, Jonesboro Division, did on May 27, 1981, enter its Orders authorizing Trustee to sell all grain situated in debtors' elevators in Caruthersville, Missouri; Holcomb, Missouri; Ristine, Missouri; and

Naylor, Missouri, including, but not limited to all milo, soybeans, wheat, and corn situated in said elevators free and clear of all liens; and

WHEREAS, said Orders are now final and non-appealable; and

WHEREAS, Trustee desires to sell and Buyer desires to purchase all milo, soybeans, wheat, and corn situated in Trustee's elevators and warehouse facilities owned and/or leased by Frisbee Cotton Company and James Gin & Elevator at the above locations in Missouri; and

WHEREAS, Trustee does not have sufficient expertise, labor, transportation, and liquid funds with which to sell and market the above grain without considerable burden on the estates of Frisbee Cotton Company and James Gin & Elevator; and

WHEREAS, Buyer and in its individual representatives have considerable experience and expertise in the merchandising and delivery of grain of all kinds; and

WHEREAS, Buyer on or about March 16, 1981, entered into a previous Agreement for Purchase and Sale of Milo with Trustee for the purchase and sale of all milo situated at West Memphis, Arkansas, in one of Trustee's Arkansas warehouses; and

WHEREAS, Buyer to date has substantially performed all of its obligations under the terms of that particular Agreement for Purchase and Sale of Milo;

NOW, THEREFORE, the parties agree as follows:

1. Trustee agrees to sell and Buyer agrees to purchase all milo, soybeans, wheat, and corn situated in warehouses and elevators owned and/or leased by Frisbee Cotton Company and James Gin & Elevator at various locations in Missouri on the basis "as it is" and "where it is"

as those terms are customarily used and understood in the grain industry. Buyer agrees to pay Trustee a price of $3.60 per hundredweight (CWT) for milo and/or grain sorghum; $6.71 per bushel for soybeans, save and except soybeans claimed to be owned by Trustee which formerly were situated at Trustee's warehouse at Ristine, Missouri, but which are now located at an MFA warehouse at Bernie, Missouri and which are not part of the grain to be purchased and sold; $4.00 per hundredweight (CWT) for corn; and $3.08 per bushel for wheat. For purposes of this Agreement, the grade or grades of the grain shall not be a factor in determining the price to be paid Trustee by Buyer. Also, for purposes of this Agreement, all standard weights designated by the United States and in particular the Department of Agriculture of the United States and any instrumentalities thereof shall be in full force and effect and shall govern.

2. Trustee shall furnish at his expense at the points of origin (warehouses of the debtor entities at various locations in the State of Missouri) a person experienced in weighing grain. In the event there should be a disagreement between the parties over specific weights of the grain at either the points of origin or the points of destination, Trustee and Buyer agree to submit the matter for determination before the United States Bankruptcy Court for the Eastern District of Arkansas, Jonesboro Division, having jurisdiction of the above captioned Chapter 11 proceedings for the debtor entities. Trustee and Buyer agree and acknowledge that the above Court shall have exclusive jurisdiction over all matters in this Agreement. In all cases where grain is weighed by a U.S. Federal weigher and/or inspector, his certification will be binding on the parties.

3. Buyer agrees with Trustee that it will furnish all

labor, expertise, equipment, and transportation necessary to remove the grain from Trustee's warehouses at various locations in the State of Missouri and transport the same at Buyer's expense to the destinations for the grain selected by Buyer. For all purposes under this Agreement, Buyer shall act as an independent contractor and in no event shall be construed to be an agent, servant, or employee of Trustee for any purpose or for any reason. Buyer shall select its own methods and procedures and shall use its own equipment for removal of the grain from Trustee's warehouses and elevators in the State of Missouri. Trustee shall have no right to determine or direct the actions of Buyer in removing the grain, subject, however, to a determination by Trustee of the warehouses and elevator facilities first to be emptied under the terms of this Agreement.

4. Buyer agrees to hold Trustee harmless and indemnify Trustee, his agents, servants, and employees, and the above debtor entities of and from any and all claims, demands, actions, or causes of action arising out of or in any manner connected with Buyer's operations and/or performance under this Agreement including, but not limited to, injury or damage to persons or property of persons not parties to this Agreement. Buyer agrees to carry its own Workers' Compensation coverage required by the laws of the State of Missouri, general liability coverage, and to require its purchaser or purchasers to insure the grain for its full value or have it under a bill of lading until it has been paid for in full. Buyer agrees to furnish Trustee or his designated representative with a certificate of insurance for each of the above types of insurance coverage satisfactory in amounts and terms to Trustee. All insurance must be underwritten by insurance companies qualified to transact insurance business within the State of Missouri.

5. Buyer agrees to and shall furnish Trustee with satisfactory written proof that it has established an irrevocable line of credit equal to at least $500,000 which shall remain in full force and effect during the full existence of this Agreement and until said Agreement is terminated by the parties or by the United States Bankruptcy Court for the Eastern District of Arkansas, Jonesboro Division. Buyer shall furnish Trustee with the name and address of its banking institution at which the line of credit has been established. Trustee shall have the right and privilege of drawing drafts against said line of credit at said bank at least weekly and more often if the amount to be drawn exceeds $25,000. Buyer agrees to secure in part its obligations under this Agreement by an irrevocable letter of credit to be issued by Buyer's bank in favor of Trustee in an amount not less than $500,000. Trustee, in the event of a default under this Agreement by Buyer, shall have the right to be paid from said letter of credit as it may be replenished all such sums due him arising from Buyer's default. Buyer agrees to have the letter of credit replenished in the event of payments thereunder to Trustee so that at all times herein mentioned Trustee will be protected in an amount not less than $500,000 and Buyer's bank will be liable to him at all times in at least that amount.

6. Trustee and Buyer agree that Trustee shall be permitted to draw 90% of each dollar amount of grain sold by Trustee to Buyer and represented by state or federal documents showing the weights for each shipment. The balance of each grain shipment shall be settled on as soon as possible and the proceeds remitted to Trustee by Buyer.

7. Buyer shall have ninety (90) days after July 13, 1981, within which to remove all grain from Trustee's warehouses and elevator facilities at various locations in

the State of Missouri. For each day thereafter any grain shall remain in any of Trustee's warehouses and elevator facilities in the State of Missouri, Buyer shall pay to Trustee as liquidated damages the sum of $100 per day per warehouse and/or elevator facility.

8. Buyer agrees to surrender possession of the warehouses to Trustee in as good a condition as the warehouses were in at the time of the commencement of this Agreement, ordinary wear and tear excepted. Any physical damage to the warehouses caused by Buyer, its agents, servants, employees, invitees, permittees, or guests shall be repaired by Buyer at its expense.

9. Trustee shall be obligated to provide fire, windstorm, and other similar type casualty insurance on the Missouri warehouses at all times during the existence of this Agreement.

10. This Agreement constitutes the entire agreement between the parties. No oral statements or representations not reduced to writing herein shall be binding on the parties.

11. In the event the above captioned Chapter 11 proceeding for Frisbee Cotton Company and James Gin & Elevator shall be converted from a Chapter 11 proceeding to a Chapter 7 proceeding, Trustee and Buyer agree that any such conversion shall have no bearing and effect upon the obligations of the parties under this Agreement which shall continue and remain the same. The parties hereto shall not attempt to reject this Agreement as an "executory contract" under 11 U.S.C. §365 of the United States Bankruptcy Code or any other applicable provision of federal or state law.

12. The parties agree that this Agreement shall be construed and governed in accordance with the laws of the

State of Arkansas to the extent not in conflict with the United States Bankruptcy Code, the Rules of Bankruptcy Procedure, and the Interim Bankruptcy Rules.

13. In the event of a breach of any covenant of this Agreement by Buyer or in the event of default for any reason of any of the terms of this Agreement by Buyer, except for acts of God or government or delays caused by strikes, storms, shortage of cars, embargos, or any contingency beyond Buyer's control, Trustee shall have the right to terminate immediately this Agreement without notice to Buyer who shall have no further rights hereunder. Trustee shall thereafter be permitted to resell any remaining grain to a buyer or buyers of his choice with no further obligations to Buyer. In the event of any resale of the grain by Trustee, Buyer acknowledges that it will have no right, title, interest, claim, or equity in and to said grain and/or the sale proceeds.

14. For purposes of this Agreement, the singular includes the plural and the plural includes the singular.

15. Trustee and Buyer agree and acknowledge that the terms and conditions of this Agreement have been fully explained to them by their legal counsel, that they are familiar with all the terms of this Agreement, that they understand the same, and that they have entered into this Agreement of their own free will and not under any compulsion or duress.

16. Buyer agrees with Trustee that it will comply with and obey all laws, regulations, and statutes of the State of Missouri and of any county and/or municipality thereof in which the obligations of this Agreement are to be performed by Buyer to the end that no legal proceedings shall be brought against Trustee and/or Buyer by any governmental unit situated in the State of Missouri.

17. Buyer further agrees to commit no waste in or upon the warehouse and/or elevator facilities of Trustee situated at various locations in the State of Missouri and agrees not to carry on any unlawful activity at such locations.

DATED and entered into at Little Rock, Arkansas, this 26 day of June, 1981.

/s/ Robert P. Lindsey, Trustee
Robert P. Lindsey, Chapter 11 Trustee
for Don James, Robert James, and
G. E. James, d/b/a Frisbee Cotton
Company and James Gin & Elevator

WITNESS:
/s/ Reba L. Mangum

BEARHOUSE, INC., an Arkansas
corporation
By: /s/ Thomas C. Couch, Pres.
President

ATTEST:
/s/ Richard E. Griffin
Secretary